

A N
A N A L Y S I S
O F T H E
L A W S
O F

E N G L A N D.

in England. [Appendix - Law.]

O X F O R D,
P R I N T E D A T T H E C L A R E N D O N P R E S S.
M. DCC. LVI.

AN

ANALYSIS

OF THE

LAWS

OF

INDIANA



OXFORD

Printed at the University Press

M DCC LVI

P R E F A C E.

IT hath often been observed with Concern, that the Study of the Laws of our Country hath been totally neglected in the usual Education of ENGLISH Gentlemen; and, in particular, that no Opportunities of cultivating this Branch of Learning have hitherto been afforded in those excellent and illustrious Seminaries, wherein every other Science is taught in it's utmost Perfection. To remedy, in some little Degree, so just a Complaint, the Compiler of the following Sheets was induced about three Years ago to institute, and since to continue, a Course of Lectures, calculated for the Promotion of this Study in the University of OXFORD. And as he was encouraged to enter upon this Undertaking by Gentlemen, both in the University and out of it, for whose Learning and Judgment the World has the highest Deference; so he cannot but acknowledge, with due Gratitude, the favorable Reception which hath been given it: A Mark of Approbation, which

he is sensible must be attributed entirely to the Propriety of the Design, and not to the Manner of it's Execution.

In order to render this Attempt more extensively useful, he thought it incumbent upon him to accommodate his Lectures, not only to the Use of such Students, as were more immediately designed for the Profession of the common Law; but also of such other Gentlemen, as were desirous of some general Acquaintance with the Constitution and legal Polity of their native Country. He therefore made it his first Endeavour, to mark out a Plan of the Laws of ENGLAND, so comprehensive, as that every Title might be reduced under some or other of it's general Heads, which the Student might afterwards pursue to any Degree of Minuteness; and at the same time so contracted, that the Gentleman might with tolerable Application contemplate and understand the Whole. For if this was successfully performed, he apprehended he should then be enabled, with greater Perspicuity and Ease, to execute the Remainder of his Design; in deducing the History and Antiquities of the principal Branches of Law, in selecting and illustrating their fundamental Principles and leading Rules, in explaining their Utility and Reason, and in comparing them with the Laws of Nature and of other Nations.

In

*In the Pursuit of these his Endeavours, he found himself obliged to adopt a Method, in many respects totally new. The most early, and indeed the most valuable, of those who have laboured in reducing our Laws to a System, are GLANVIL, and BRAC-
TON, BRITTON, and the Author of FLETA : But these, and all others who preceded King HENRY the eighth, are so occupied in antient (he does not say, useless) Learning, that it had been but an awkward Attempt to engraft on their Stock the Improvements of later Ages. — FITZHERBERT, and BROOK, and the subsequent Authors of Abridgments, have chosen a Method, the least adapted of any to convey the Rudiments of a Science, namely, that of the Alphabet. — Lord BACON, in his Elements, hath purposely avoided any regular Order ; selecting only some distinct and dis-joined Aphorisms, according to his own Account of them ; which however he hath expounded in so excellent a Manner, that the Narrowness of his Plan is therefore the more to be regretted. — The Institutes of Sir EDWARD COKE are unfortunately as deficient in Method, as they are rich in Matter ; at least, the two first Parts of them ; wherein, acting only the Part of a Commentator, he hath thrown together an infinite Treasure of Learning in a loose desultory Order. — Dr COWEL hath indeed endeavoured to reduce the Law*
of

of ENGLAND, in his *Latin Institutions*, to the *Model of those of JUSTINIAN*: And we cannot be surprized, that so forced and unnatural a Contrivance should be lame and defective in it's Execution.—Sir HENRY FINCH's *Discourse of Law* is a *Treatise of a very different Character*: His Method is greatly superior to all that were before extant; his Text is weighty, concise, and nervous; his Illustrations are apposite, clear, and authentic. But, with all these Advantages, it is not sufficiently adapted to modern Use; since the subsequent Alterations of the Law, by the Abolition of military Tenures, and the Disuse of real Actions, have rendered near half of his Book obsolete.—Dr WOOD has effectually removed this Objection, but has fallen into the contrary Extreme; his Institute being little more than FINCH's *Discourse* enlarged, and so thoroughly modernized, as to leave us frequently in the Dark, with regard to the Reason and Original of many still subsisting Laws, which are founded in remote Antiquity. And as in some Titles his Plan is too contracted, in others also it seems to be too diffuse. Upon the Whole however his Work is undoubtedly a valuable Performance; and great are the Obligations of the Student to him, and his Predecessor FINCH, for their happy Progress in reducing the Elements of Law from their former Chaos to a regular methodical Science. Yet, as neither could
be

be followed entirely in the proposed Course of academical Lectures; it was judged the most eligible Way not to adopt them in Part; especially as there were extant the Outlines of a still superior Method, sketched by a very masterly Hand.

For, of all the Schemes hitherto made public for digesting the Laws of ENGLAND, the most natural and scientific of any, as well as the most comprehensive, appeared to be that of Sir MATTHEW HALE, in his posthumous Analysis of the Law. This Distribution therefore hath been principally followed; with what Variations, the learned Reader will easily perceive from the ensuing Abstract; and it may be no unprofitable Employment for the Student to learn by comparing them. For these the Compiler thinks it unnecessary to give his Reasons: For, since those who have gone before him have successively deviated from each other's Plan, he hopes to be excused, if, in order to adapt some things the better to his own Capacity, he frequently departs from them all; having in general rather chosen, by compounding their several Schemes, to extract a new Method of his own, than implicitly to copy after any.

Indeed had he closely adhered to HALE's, or any other Distribution, it might probably have rendered

ed the Task he had undertaken less laborious; at least, it would have saved him the Trouble of the present Publication. For he soon became sensible of one Inconvenience attending his Deviation from former Systems: That, in a Course of oral Lectures, on a Science entirely new, and sometimes a little abstruse, it was not always easy for his Audience so far to command their Attention, as at once to apprehend both the Method and Matter delivered: And, whenever, through Inattention in the Hearers, or (too frequently) through Obscurity in the Reader, any Point of Importance was forgotten or misunderstood, it became next to impossible to gather up the broken Clue, without having some written Compendium to which they might resort upon Occasion. These Considerations gave Birth to the following ANALYSIS, which exhibits the Order, and principal Divisions of his Course; and is only to be considered as a larger Syllabus, interspersed with a few Definitions and general Rules, to assist the Recollection of such Gentlemen as have formerly honoured him with their Attendance; or such as may hereafter become his Auditors, till this Task shall fall into abler Hands, and the Province, which he originally undertook in a private Capacity, shall be put upon a public Establishment.

To the ANALYSIS is subjoined an APPENDIX, consisting of such Tables, Copies of Instruments, and Forms of judicial Proceedings, as were judged to be necessary for explaining certain Principles, and Matters of daily Practice ; of which it was however impracticable to convey any adequate Idea by verbal Descriptions only. In the Explanation of one of these, (the Table of Descents) the Compiler hath been obliged to enter into a minute Discussion of a Point liable to some Controversy : This he could have wished to have avoided ; but was fearful, of either appearing to mislead the Student, had no Notice been taken of Justice MANWOOD's Doctrine ; or perhaps of really misleading him, had that Doctrine been followed in constructing the Table.

With regard to the Book in general, if by any Accident it should fall into other Hands than those for whose Use it is designed, the Author hopes it will meet with that Candor which is ever the Companion of sound Learning. The Gentlemen of his own Profession, he is confident, will suspend their Censures of whatever (in this Abstract) may appear either dubious or unwarrantable ; at least till they are informed how far (in the Work at large) it is guarded by Restrictions, qualified by Exceptions, or supported by Reason and Authority. And in the end,

end, he must beg Leave to apply to his whole Undertaking, as well as to this trifling Performance, the Words of his Master LITTLETON: "Jeo ne voile
"que tu croyes, que tout ceo que jeo ay dit en
"les ditz Lyvers soyt LEY; car jeo ne ceo voile
"enprendre, ne presumer. — Nient mayns, co-
"ment que certaynes Choses, queux font notes
"et specyfyes en les dites Lyvers, ne font pas
"LEY, unquore tielx Choses ferront toy pluis
"apte et able de entendre et apprendre les Argu-
"mentes et les Reasons del LEY.

ALL SOULS COLLEGE.

2 Nov. 1756.

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AN
ANALYSIS
OF THE
LAWS OF ENGLAND.

BOOK THE FIRST.

CHAPTER I.

Of the Nature of LAWS in general.

Lectures begun Nov: 20, 1758.

I.

LAW is a Rule of Action, prescribed by a superior Power.

2.

NATURAL Law is the Rule of HUMAN Action, prescribed by the Creator, and discoverable by the Light of Reason.

3.

The DIVINE, or REVEALED Law, considered as a Rule of Action, is also the Law of Nature, imparted by God himself.

A

4. The

4.

The Law of NATIONS is that which regulates the Conduct and mutual Intercourse of independent States with each other, by Reason and natural Justice.

5.

MUNICIPAL, or CIVIL Law, is the Rule of CIVIL Conduct, prescribed by the supreme Power in a State, commanding what is Right, and prohibiting what is Wrong.

6.

SOCIETY is formed for the Protection of Individuals; and STATES, or Government, for the Preservation of Society.

7.

In all States there is an absolute SUPREME Power, to which the Right of Legislation belongs; and which, by the singular Constitution of these Kingdoms, is vested in the King, Lords, and Commons.

8.

The PARTS of a Law are, 1. The DECLARATORY; which defines what is Right, and Wrong. 2. The DIRECTORY; which consists in commanding the Observation of Right, or prohibiting the Commission of Wrong. 3. The REMEDIAL; or Method of recovering private Rights, and redressing private Wrongs. 4. The VINDICATORY Sanction of Punishments for public Wrongs; wherein consists the most forcible Obligation of human Laws.

9. To

9.

TO INTERPRET a Law, we must enquire after the Will of the Maker: Which may be collected either from the Words, the Context, the Subject-matter, the Effects and Consequence, or the Spirit and Reason of the Law.

10.

From the latter Method of Interpretation arises EQUITY, or the Correction of that wherein the Law (by reason of its Universality) is deficient.

CHAP. II.

*Of the GROUNDS and FOUNDATION of the
Laws of ENGLAND.*

1.

THE LAWS of ENGLAND are of two kinds; the UNWRITTEN or COMMON LAW, and the WRITTEN or STATUTE LAW.

2.

The UNWRITTEN LAW includes, 1. General Customs. 2. Particular Customs. 3. Particular Laws.

3.

GENERAL CUSTOMS, or the COMMON LAW properly so called, are founded upon immemorial universal Usage, whereof judicial Decisions are the Evidence; which Decisions are preserved in the public

Records, explained in the Year-Books and Reports, and digested by Writers of approved Authority.

4.

PARTICULAR CUSTOMS are those, which are only in Use within some peculiar Districts ; as Gavelkind, the Customs of LONDON, &c.

5.

These — 1. must be proved to exist ; — 2. must appear to be legal ; that is, immemorial, continued, peaceable, reasonable, certain, compulsory, beneficial, and consistent ; — 3. must, when allowed, receive a strict Construction.

6.

PARTICULAR LAWS are such as, by special Custom, are adopted and used only in certain peculiar Courts, under the Superintendence and Controul of the Common and Statute Law ; namely, the ROMAN CIVIL and CANON LAWS.

7.

The WRITTEN or STATUTE LAWS, are the Acts which are made by the King, Lords, and Commons in Parliament ; to supply the Defects, or amend what is amiss, of the Unwritten Law.

8.

In order to moderate the Rigor of both the Unwritten and Written Law, in Matters of private Right, it is the Office of EQUITY to interpose.

CHAP. III.

*Of the COUNTRIES subject to the Laws of
ENGLAND.*

1.

THE LAWS of ENGLAND are not received in their full Extent in any other Territories, besides the Kingdom of ENGLAND, and the Dominion of WALES, which have in most respects an entire Community of Laws.

2.

SCOTLAND, notwithstanding the Union, retains its own municipal LAWS; though subject to Regulation by the BRITISH Parliament.

3.

BERWICK is subject to the SCOTS Law, but bound by all Acts of Parliament.

4.

IRELAND is a distinct subordinate Kingdom, governed by the Common Law of ENGLAND; but not bound by modern Acts of the BRITISH Parliament, unless particularly named.

5.

The Isle of MAN, the NORMAN Isles, (as GUERNSEY, &c.) and our PLANTATIONS abroad, are governed by their own LAWS; but are bound by Acts of the BRITISH Parliament, if specially named therein.

6. The

6.

The TERRITORY of ENGLAND is divided, ECCLESIASTICALLY, into Provinces, Dioceses, Archdeaconries, Rural Deanries, and Parishes.

7.

The CIVIL Division is, first, into Counties, of which some are palatine; then, sometimes, into Rapes, Lathes, or Trithings; next, into Hundreds or Wapentakes; and, lastly, into Towns, Vills, or Tithings.

CHAP. IV.

Of the OBJECTS *of the* LAWS *of* ENGLAND ;
and, first, of the ABSOLUTE RIGHTS *of* INDIVIDUALS.

I.

THE Objects of the LAWS of ENGLAND are,
1. RIGHTS. 2. WRONGS.

2.

RIGHTS are the Rights of PERSONS, or the Rights of THINGS.

3.

The Rights of PERSONS are such as concern, and are annexed to, the Persons of Men: And, when the Person to whom they are due is regarded, they are called (simply) RIGHTS; but, when we consider the Person FROM whom they are due, they are then denominated DUTIES.

4.

PERSONS are either NATURAL, that is, such as they are formed by Nature; or ARTIFICIAL, that is, created by human Policy, as Bodies politic or CORPORATIONS.

5.

The Rights of NATURAL Persons are, 1. ABSOLUTE, or such as belong to Individuals. 2. RELATIVE, or such as regard Members of Society.

6.

The ABSOLUTE RIGHTS of INDIVIDUALS, regarded by the municipal Laws, (which pay no Attention to DUTIES of the Absolute Kind) consist in Political or Civil LIBERTY.

7.

Political, or Civil LIBERTY, is the natural Liberty of Mankind, so far restrained by human Laws (and no farther) as is necessary for the Good of Society.

8.

The Absolute Rights, or Civil Liberties, of ENGLISHMEN, as frequently declared in Parliament, are principally three; the Right of PERSONAL SECURITY, of PERSONAL LIBERTY, and of PRIVATE PROPERTY.

9.

The Right of PERSONAL SECURITY, consists in the legal Enjoyment of Life, Limb, Body, Health, and Reputation.

10. The

10.

The Right of PERSONAL LIBERTY consists in the free Power of Loco-motion, without illegal Restraint or Banishment.

11.

The Right of PRIVATE PROPERTY consists in the free Use and Disposal of every Man's lawful Acquisitions, without Injury or illegal Diminution.

12.

Besides these three PRIMARY Rights, there are others which are SECONDARY and subordinate; viz.

(To preserve the former from unlawful Attacks;)

1. The Constitution and Power of Parliaments:

2. The Limitation of the King's Prerogative: And,

(to vindicate them, when actually violated;)

3. The regular Administration of public Justice: 4. The

Right of Petitioning for Redress of Grievances:

5. The Right of Having and Using Arms for Self-Defence.

CHAP. V.

Of the Rights of Persons in PUBLIC RELATIONS; and therein, first, of the PARLIAMENT.

I.

THE RELATIONS of Persons are, 1. PUBLIC. 2. PRIVATE. The PUBLIC Relations are MAGISTRATES and PEOPLE. MAGISTRATES are SUPREME, or SUBORDINATE. And of SUPREME Magistrates, in ENGLAND, the PARLIAMENT is the supreme Legislative, the KING the supreme Executive.

2.

PARLIAMENTS, in some Shape, are of as high Antiquity as the SAXON Government in this Island; and have subsisted, in their present Form, at least five hundred Years.

3.

The PARLIAMENT is assembled by the King's Writs, and it's Sitting must not be intermitted above three Years.

4.

It's constituent Parts are the King's Majesty, the Lords spiritual and temporal, and the Commons represented by their Members: Each of which Parts has a negative, or necessary, Voice in making Laws.

5.

With regard to the GENERAL LAW of PARLIAMENT;—Its Power is absolute: Each House is the Judge

Judge of it's own Privileges: And all the Members of either House are entitled to the Privilege of Speech, of Person, of their Domestics, and of their Lands and Goods.

6.

The PECULIAR Privileges of the Lords are, to hunt in the King's Forests; to be attended by the Sages of the Law; to make Proxies; to enter Protests; and to regulate the Election of the sixteen Peers of NORTH-BRITAIN.

7.

The PECULIAR Privileges of the Commons are, to raise Taxes on the Subject; and to determine the Merits of their own Elections, with regard to the Qualifications of the Electors, and Elected, and the Proceedings at Elections themselves.

8.

Bills are usually twice read in each House, committed, engrossed, and then read a third Time; and when they have obtained the Concurrence of both Houses, and received the Royal Assent, they become ACTS OF PARLIAMENT.

9.

The Houses may adjourn themselves; but the PARLIAMENT can only be prorogued by the King.

10.

PARLIAMENTS are dissolved, 1. At the King's Will. 2. By the Demise of the Crown, i. e. within six Months after. 3. By Length of Time, or Having sate for the Space of seven Years.

CHAP. VI.

Of the KING ; and, first, of his TITLE.

I.

THE Supreme Executive Power of this Kingdom is lodged in a Single Person ; the KING or QUEEN.

2.

This Royal Person may be considered with regard to, 1. His Title. 2. His Dignity. 3. His Duties. 4. His Councils. 5. His royal Family. 6. His Prerogative. 7. His Revenue.

3.

With regard to his TITLE ; The Crown of ENGLAND, by the positive Constitution of the Kingdom, hath ever been descendible, and so continues.

4.

The Crown is descendible in a Course peculiar to itself.

5.

This Course of Descent is subject to Limitation by Parliament.

6.

Notwithstanding such Limitations, the Crown retains its descendible Quality, and becomes hereditary in the Prince to whom it is limited.

7. King

7.

King *EGBERT*, King *CANUTE*, and King *WILLIAM I.* have been successively constituted the Common Stocks, or Ancestors, of this Descent.

8.

At the Revolution, the Convention of Estates, or representative Body of the Nation, declared, that the Misconduct of King *JAMES II.* amounted to an Abdication of the Government, and that the Throne was thereby Vacant.

9.

In consequence of this Vacancy, and from a Regard to the antient Line, the Convention appointed the next protestant Heirs of the Blood royal of King *CHARLES I.* to fill the vacant Throne, in the old Order of Succession; with a temporary Exception, or Preference, to the Person of King *WILLIAM III.*

10.

On the impending Failure of the protestant Line of King *CHARLES I.* whereby the Throne might again have become Vacant; the King and Parliament extended the Settlement of the Crown to the protestant Line of King *JAMES I.* viz. to the Princess *SOPHIA* of *HANOVER*, and the Heirs of her Body, being Protestants: And She is now the Common Stock, from whom the Heirs of the Crown must descend.

CHAP. VII.

*Of the KING'S DIGNITY, DUTIES, COUNCILS,
and Royal FAMILY.*

I.

THE KING'S DIGNITY consists, 1. In his personal Sovereignty; 2. In his absolute Perfection; 3. In his Perpetuity; 4. In his legal Ubiquity; 5. In that he is bound by no Statute, unless specially named; 6. In that his Deed is a public Record.

2.

The KING'S DUTIES are, to govern his People according to Law, to execute Judgment in Mercy, and to maintain the established Religion. These are his Part of the original Contract between himself and the People; founded in the Nature of Society, and expressed in his Oath at the Coronation.

3.

The KING'S COUNCILS are, 1. The Parliament. 2. The Peers. 3. The Judges. 4. The Privy Council.

4.

The KING's royal FAMILY are, 1. The QUEEN, either Regnant, Consort, or Dowager. 2. The Prince and Princess of WALES, and the Princess Royal. 3. The King's other Descendants.

CHAP. VIII.

Of the KING'S PREROGATIVE.

I.

PREROGATIVE is that special Power and Pre-eminence, which the KING hath, above other Persons, and out of the ordinary Course of Law, in right of his regal Dignity.

2.

Such PREROGATIVES are either DIRECT, or INCIDENTAL. The INCIDENTAL, arising out of other Matters, are considered as they arise: We now treat only of the DIRECT.

3.

In PREROGATIVE consists the Executive Power of Government.

4.

In FOREIGN Concerns; the KING, as the Representative of the Nation, has the Right or PREROGATIVE, 1. Of sending and receiving Embassadors. 2. Of making Treaties. 3. Of proclaiming War or Peace. 4. Of issuing Reprisals. 5. Of granting Safe Conducts.

5.

In DOMESTIC Affairs; the KING is considered as the General of the Kingdom, and may raise Fleets and Armies, build Forts, and confine his Subjects within the Realm, or recall them from foreign Parts.

6. The

6.

The KING is also the Fountain of Justice, and general Conservator of the Peace; and therefore may erect Courts, prosecute Offenders, pardon Crimes, and issue Proclamations.

7.

He is likewise the Fountain of Honour, of Office, and of Privilege.

8.

He is also the Arbiter of DOMESTIC Commerce; (not of FOREIGN, which is regulated by the Law of Merchants) and is therefore entitled to the Erection of public Marts, the Regulation of Weights and Measures, and the Coinage or Legitimation of Money.

9.

The KING is, lastly, the supreme Head of the Church; and, as such, regulates Synods, nominates Bishops, and receives Appeals in all ecclesiastical Causes.

CHAP. IX.

Of the KING'S ORDINARY REVENUE.

I.

THE KING'S REVENUE is either ORDINARY or EXTRAORDINARY. And the ORDINARY is, 1. Ecclesiastical. 2. Temporal.

2.

The ECCLESIASTICAL REVENUE consists, 1. In the Custody of the Temporalities of vacant Bishopricks. 2. In Corodies and Pensions. 3. In extra-parochial Tithes. 4. In the first Fruits and Tenths of Benefices.

3.

The KING'S ordinary TEMPORAL REVENUE consists, 1. In the Demefne Lands of the Crown. 2. In the hereditary Excise; being Part of the Consideration for the Purchase of his feodal Profits, and the Prerogatives of Purveyance and Pre-emption. 3. In Wine Licences; being the Residue of the same Consideration. 4. In his Forests. 5. In his Courts of Justice. 6. In royal Fish. 7. In Wrecks, and Things jetsam, flotsam, and ligan. 8. In royal Mines. 9. In Treasure Trove. 10. In Waifs. 11. In Estrays. 12. In Forfeitures for Offences, and Deodands. 13. In Escheats of Lands. 14. In the Custody of Ideots and Lunatics.

C H A P. X.

Of the KING'S EXTRAORDINARY REVENUE.

I.

THE KING'S EXTRAORDINARY REVENUE consists in Aids, Subsidies, and Supplies, granted him by the Commons in Parliament.

2.

Heretofore these were usually raised by Grants of the (nominal) TENTH or FIFTEENTH of the Moveables in every Township; or by SUBSIDIES assessed upon Individuals, with respect to their Lands and Goods.

3.

A new System of Taxation took place soon after the Revolution: Our modern Taxes are therefore,
1. ANNUAL. 2. PERPETUAL.

4.

The ANNUAL Taxes are, 1. The Land Tax, or the antient Subsidy raised upon a new Assessment. 2. The Malt Tax, being an annual Excise on Malt, Mum, Cyder, and Perry.

5.

The PERPETUAL Taxes are, 1. The Customs, or Tonnage and Poundage of all Merchandize, exported and imported. 2. The Excise Duty, or inland Imposition, on a great Variety of Commodities. 3. The Salt Duty, or Excise on Salt. 4. The Post Office, or Duty for the Carriage of Letters.

5. The Stamp Duty on Paper, Parchment, &c.
6. The Duty on Houses and Windows.
7. The Duty on Licences for Hackney Coaches and Chairs.

6.

Part of this Revenue is applied to pay the Interest of the National Debt, till the Principal is discharged by Parliament.

7.

The Produce of these several Taxes were originally separate and SPECIFIC FUNDS, to answer SPECIFIC LOANS upon their respective Credits; but are now consolidated by Parliament into three principal Funds, the AGGREGATE, GENERAL, and SOUTH-SEA Funds, to answer ALL the Debts of the Nation; the public Faith being also superadded, to supply Deficiencies, and strengthen the Security of the Whole.

8.

The Surplusses of these Funds, after paying the Interest of the national Debt, are carried together, and denominated the SINKING Fund: Which, unless otherwise appropriated by Parliament, is annually applied to pay off some Part of the Principal.

9.

But, previous to this, the SINKING Fund is charged to make up the Deficiencies, if any, in the CIVIL LIST; being the immediate proper Revenue of the Crown, settled by Parliament on the King at his Accession, for defraying the Charges of Civil Government.

C H A P. XI.

Of SUBORDINATE Magistrates.

I.

SUBORDINATE Magistrates, of the most general Use and Authority, are, 1. SHERIFFS. 2. CORONERS. 3. JUSTICES of the PEACE. 4. CONSTABLES. 5. SURVEYORS of the HIGHWAYS. 6. OVERSEERS of the POOR.

2.

The SHERIFF is the Keeper of each County, annually nominated in due Form by the King; and is (within his County) a Judge, a Conservator of the Peace, a ministerial Officer, and the King's Bailiff.

3.

CORONERS are permanent Officers of the Crown in each County, elected by the Freeholders; whose Office it is to make Enquiry concerning the Death of the King's Subjects, and certain Revenues of the Crown; and also, in particular Cases, to supply the Office of Sheriff.

4.

JUSTICES of the PEACE are Magistrates in each County, statutably qualified, and commissioned by the King's Majesty; with Authority to conserve the Peace; to hear and determine Felonies, and other Misdemeanors; and to do many other Acts, committed to their Charge by particular Statutes.

5.

CONSTABLES are Officers of Hundreds and Townships, appointed at the Leet, and empowered to preserve the Peace, to keep Watch and Ward, and to apprehend Offenders.

6.

SURVEYORS of the HIGHWAYS are Officers, appointed annually, in every Parish; to remove Annoyances in, and to direct the Reparation of, the public Roads.

7.

OVERSEERS of the POOR are Officers, appointed annually, in every Parish; to relieve such impotent, and employ such sturdy Poor, as are SETTLED in each Parish, — by Birth; — by Parentage; — by Marriage; — or by forty Days Residence, accompanied with, 1. Notice. 2. Renting a Tenement of ten Pounds annual Value. 3. Paying their assessed Taxations. 4. Hiring and Service for a Year. 5. Apprenticeship. 6. Having a sufficient Estate in the Parish.

CHAP.

C H A P. XII.

*Of the PEOPLE, whether ALIENS, or NATIVES;
and, among the latter, first of the CLERGY.*

I.

THE PEOPLE are either ALIENS; that is, born out of the Dominions, or Allegiance, of the Crown of GREAT BRITAIN; or NATIVES; that is, born within it.

2.

Allegiance is the Duty of All Subjects; being the reciprocal Tie of the People to the Prince, in return for the Protection he affords them; and, in NATIVES, this Duty of Allegiance is natural and perpetual; in ALIENS, is local and temporary only.

3.

The Rights of NATIVES are also natural and perpetual; those of ALIENS local and temporary only; unless they be made Denizens by the King, or naturalized by Parliament.

4.

NATIVES are also either CLERGY, that is, All Persons in holy Orders, or in ecclesiastical Offices; or LAITY, which comprehends the rest of the Nation.

5.

The CLERICAL Part of the Nation, thus defined, are, 1. Archbishops and Bishops. 2. Deans and Chapters. 3. Archdeacons. 4. Rural Deans. 5. Parsons,

5. Parsons, and Vicars; to whom there are generally requisite, Holy Orders, Presentation, Institution, and Induction. 6. Curates. To which may be added, 7. Churchwardens. 8. Parish Clerks and Sextons.

CHAP. XIII.

Of the LAITY.

I.

THE LAITY are divisible into three States; CIVIL, MILITARY, and MARITIME.

2.

The CIVIL State (which includes all the Nation, except the Clergy, the Army, and the Navy; and many Individuals among them also) may be divided into the NOBILITY, and the COMMONALTY.

3.

The NOBILITY are Dukes, Marquesses, Earls, Viscounts, and Barons. These had antiently Duties annexed to their respective Honours: They are created either by Writ, that is by Summons to Parliament; or by the King's Letters-patent, that is, by royal Grant: And they enjoy many Privileges, exclusive of their senatorial Capacity.

4.

The COMMONALTY consist of Knights of the Garter, Knights Bannerets, Baronets, Knights of the

the Bath, Knights Bachelors, Esquires, Gentlemen, Yeomen, Tradefmen, Artificers, and Labourers.

5.

The MILITARY State, by the standing constitutional Law, consists of the Militia of each County, raised from among the People, according to their respective Properties, and commanded by the Lord Lieutenant.

6.

The more disciplined occasional Troops of the Kingdom are continued on foot only from Year to Year, by Parliament; and during that Period, are governed by martial Law, or arbitrary Articles of War, formed at the Pleasure of the Crown.

7.

The MARITIME State consists of the Officers and Mariners of the BRITISH Navy; who are governed by exprefs and permanent Laws, or the Articles of the Navy, established by Act of Parliament.

CHAP. XIV.

Of the PRIVATE RELATIONS of MASTER and SERVANT, and of HUSBAND and WIFE.

I.

THE PRIVATE, oeconomical, RELATIONS of Persons are four. 1. MASTER and SERVANT. 2. HUSBAND and WIFE. 3. PARENT and CHILD. 4. GUARDIAN and WARD.

2.

The first Relation may subsist between a MASTER and four Species of SERVANTS; (for Slavery is unknown to our Laws) 1. MENIAL Servants; who are HIRED. 2. APPRENTICES; who are BOUND by Indentures. 3. LABOURERS; who are casually EMPLOYED. 4. STEWARDS, BAILIFFS, and FACTORS; who are rather in a MINISTERIAL State.

3.

From this Relation result divers Powers to the MASTER; and Emoluments to the SERVANT; as Wages, &c.

4.

The MASTER hath a Property in the Service of his SERVANT; and must be answerable for such Acts as the SERVANT does, by his express, or implied, Command.

5. The

5.

The second private Relation is that of MARRIAGE; which includes the reciprocal Rights and Duties of HUSBAND and WIFE.

6.

MARRIAGE is duly contracted between Persons, 1. Consenting: 2. Free from canonical Impediments, which make it VOIDABLE: 3. Free also from the civil Impediments, — of prior Marriage; — of Want of Age; — of Non-Consent of Parents, &c, where requisite; — of Want of Reason; either of which make it totally VOID: And must be celebrated by a Priest, in due Form and Place.

7.

Marriage is dissolved, 1. By Death. 2. By Divorce in the spiritual Court; not *a Mensa & Toro* only, but *a Vinculo Matrimonii*, for canonical Cause existing previous to the Contract. 3. By Act of Parliament; as, for Adultery.

8.

By Marriage the Husband and Wife become one Person in Law; which Unity is the principal Foundation of their respective Rights, Duties, and Disabilities.

CHAP. XV.

Of the PRIVATE RELATIONS of PARENT and CHILD, and of GUARDIAN and WARD.

1.

THE third, and most universal, private Relation is that of PARENT and CHILD.

2.

CHILDREN are, 1. LEGITIMATE, or those who are born in lawful Wedlock, or within a competent time after. 2. BASTARDS, or those who are not so.

3.

The DUTIES of PARENTS to LEGITIMATE Children are, 1. Maintenance. 2. Protection. 3. Education.

4.

The POWER of PARENTS consists principally in Correction, and Consent to Marriage. Both may after Death be delegated by Will to a Guardian; and the former also, at any time, to a Tutor or Master.

5.

The DUTIES of LEGITIMATE CHILDREN to PARENTS are Obedience, Protection, and Maintenance.

6.

The DUTY of PARENTS to BASTARDS is only that of Maintenance.

7. The

7.

The RIGHTS of a BASTARD are such only as he can acquire; for he is incapable of inheriting any thing.

8.

The fourth private Relation is that of GUARDIAN and WARD, which is plainly derived from the last; they being, PRO TEMPORE, reciprocally subject to the same Rights and Duties.

9.

GUARDIANS are of divers Sorts. 1. GUARDIANS BY NATURE, or the Parents. 2. GUARDIANS FOR NURTURE, assigned by the ecclesiastical Courts. 3. GUARDIANS IN SOCAGE, assigned by the Common Law. 4. GUARDIANS BY STATUTE, assigned by the Father's Will. All subject to the Superintendence of the Court of Chancery.

10.

FULL AGE in Male or Female for all Purposes is the Age of Twenty one Years; (different Ages being allowed for different Purposes) till which Age the Person is an INFANT.

11.

An INFANT, in respect of his tender Years, has various Privileges, and various Disabilities in Law: Chiefly with regard to Suits, Crimes, Estates, and Contracts.

CHAP. XVI.

Of Bodies politic, or CORPORATIONS.

I.

BODIES politic, or CORPORATIONS, which are ARTIFICIAL Persons, are established for preserving in perpetual Succession certain Rights, which, being conferred on NATURAL Persons only, would fail in Process of Time.

2.

CORPORATIONS are, 1. AGGREGATE, consisting of many Members: 2. SOLE, consisting of one Person only.

3.

CORPORATIONS are also either SPIRITUAL, erected to perpetuate the Rights of the Church; or LAY. And the LAY are, 1. CIVIL, erected for many temporal Purposes: 2. ELEEMOSYNARY, erected to perpetuate the Charity of the Founder,

4.

CORPORATIONS can only be ERECTED, and NAMED, by virtue of the King's royal Charter.

5.

The POWERS incident to all CORPORATIONS are, 1. To maintain perpetual Succession. 2. To act in their corporate Capacity like an Individual. 3. To hold Lands, subject to the Statutes of Mortmain. 4. To have a common Seal. 5. To make By-Laws.

Which

Which last Power, in spiritual, or eleemosynary Corporations, may be executed by the King or the Founder.

6.

The DUTY of CORPORATIONS is to answer the Ends of their Institution.

7.

To enforce these Duties, all spiritual Corporations are VISITED by the Ordinary; All lay Corporations by the Founder, or his Representatives; viz. the civil by the King (who is the FUNDATOR INCIPIENS of all) represented in his Court of King's Bench; the eleemosynary by the Endower, (who is the FUNDATOR PERFICIENS of such) or by his Heirs or Assigns.

8.

CORPORATIONS may be dissolved, 1. By Act of Parliament. 2. By the natural Death of all their Members. 3. By Surrender of their Franchises. 4. By Forfeiture of their Charter.

*The Lectures of this book ended the
16th of Dec^r 1750 —*



BOOK THE SECOND.

*Of the RIGHTS of THINGS.**Lectures begun the 1st March 1759.*

CHAPTER I.

*Of DOMINION over THINGS REAL ; and, first,
of CORPOREAL Hereditaments.*

I.

ALL DOMINION over external Objects has it's Original from the Gift of the Creator to Man in general.

2.

The SUBSTANCE of Things was, at first, common to all Mankind ; yet a temporary Property, in the USE of them, might even then be acquired, and continued, by OCCUPANCY.

3.

In Process of Time a permanent Property was established in the SUBSTANCE, as well as the USE, of Things ; which was also originally acquired by OCCUPANCY only.

4.

Left this Property should determine by the Owner's Dereliction, or Death, whereby the Thing would again become common, Societies have established

blished CONVEYANCES, WILLS, and HEIRSHIPS, in order to continue the Property of the first Occupant: And, where by Accident such Property becomes discontinued or unknown, the Thing usually results to the SOVEREIGN of the State, by virtue of the municipal Law.

5.

But of some Things, which are incapable of permanent substantial Dominion, there still subsists only the same transient usufructuary Property, which originally subsisted in all Things.

6.

In this PROPERTY, or exclusive Dominion, consist the RIGHTS of THINGS; which are, 1. Things REAL. 2. Things PERSONAL.

7.

In Things REAL may be considered, 1. Their several KINDS. 2. The TENURES, by which they may be holden. 3. The ESTATES, which may be acquired therein. 4. Their TITLE, or the Means of acquiring and losing them.

8.

All the several KINDS of Things real are reducible to one of these three, viz. LANDS, TENEMENTS, or HEREDITAMENTS; whereof the second includes the first, and the third includes the first and second.

9.

HEREDITAMENTS therefore, or whatever may come to be inherited, being the most comprehensive
Denomi-

Denomination of Things Real, are either CORPOREAL OR INCORPOREAL.

10.

CORPOREAL Hereditaments consist wholly of LANDS, in their largest legal Sense; wherein they include not only the Face of the Earth, but every other Object of Sense adjoining thereto, and subsisting either above or beneath it.

CHAP. II.

Of INCORPOREAL Hereditaments.

I.

INCORPOREAL Hereditaments are Rights issuing out of Things corporeal, or concerning, or annexed to, or exercisable within, the same.

2.

Incorporeal Hereditaments are, 1. ADVOWSONS. 2. TITHES. 3. COMMONS. 4. WAYS. 5. OFFICES. 6. DIGNITIES. 7. FRANCHISES. 8. CORODIES OR PENSIONS. 9. ANNUITIES. 10. RENTS.

3.

An ADVOWSON is a Right of Presentation to an ecclesiastical Benefice; either appendant, or in gross. This may be, 1. Presentative. 2. Collative. 3. Donative.

4.

TITHES are the tenth Part of the Increase yearly arising from the Profits and Stock of Lands, and the

the personal Industry of Mankind. These, by the antient and positive Law of the Land, are due of common Right to the Parson or Vicar, unless specially discharged, 1. By real Composition. 2. By Prescription, either *de Modo decimandi*, or *de non decimando*.

5.

COMMON is a Profit which a Man hath in the Lands of another; being, 1. Common of Pasture; which is either appendant, appurtenant, because of Vicinage, or in gross. 2. Common of Piscary. 3. Common of Turbary. 4. Common of Estovers, or Botes.

6.

WAYS are a Right of passing over another Man's Ground.

7.

OFFICES are the Exercise of public, or private, Employments.

8.

FOR DIGNITIES, which are Titles of Honour, see Book I. Ch. 13.

9.

FRANCHISES are a royal Privilege, or Branch of the King's Prerogative, subsisting in the Hands of a Subject.

10.

FOR CORODIES and PENSIONS, which are ecclesiastical Annuities, see Book I. Ch. 9.

II.

AN ANNUITY is a yearly Sum of Money, charged upon the Person, and not upon the Lands, of the Grantor.

12.

RENTS are a certain Profit issuing yearly out of Lands and Tenements; and are reducible to,
1. Rent-Service. 2. Rent-Charge. 3. Rent-Seck.

CHAP. III.

Of the ANTIENT TENURES of Things real.

I.

THE Doctrine of TENURES is derived from the FEODAL Law; which was planted in EUROPE by it's northern Conquerors, at the Dissolution of the ROMAN Empire.

2.

Pure and PROPER FEUDS were Parcels of Land, allotted by a Chief to his Followers; to be held on the Condition of personally rendering due military Service to their Lord.

3.

These were granted by Investiture; were held under the Bond of Fealty; were inheritable only by Descendants; and could not be transferred without the mutual Consent of the Lord and Vafal.

4. IM-

4.

IMPROPER FEUDS were derived from the other; but differed from them in their Original, their Services and Renders, their Descent, and other Circumstances.

5.

The Lands of ENGLAND were converted into FEUDS, of the improper Kind, soon after the NORMAN Conquest: Which gave Rise to the grand Maxim of Tenure; viz. That all Lands in the Kingdom are HOLDEN, mediately or immediately, of the King.

6.

The Distinction of Tenures consisted in the Nature of their Services: As, 1. CHIVALRY, or KNIGHT-SERVICE; where the Service was free, but uncertain. 2. FREE SOCAGE; where the Service was free, and certain. 3. PURE VILLENAGE; where the Service was base, and uncertain. 4. PRIVILEGED VILLENAGE, or VILLEIN SOCAGE; where the Service was base, but certain.

7.

The most universal antient Tenure was that by CHIVALRY, or KNIGHT-SERVICE; in which the Tenant of every Knight's Fee was bound, if called upon, to attend his Lord to the Wars.

8.

The Fruits and Consequences of the Tenure by Knight-Service were. 1. Aid. 2. Relief. 3. Primer Seisin. 4. Wardship. 5. Marriage. 6. Escheat. 7. Fines for Alienation.

9.

GRAND SERJEANTY differed from Chivalry principally in it's Render or Service, and not in it's Fruits and Consequences.

10.

The personal Service in Chivalry was at length gradually changed into pecuniary Assessments, which were called SCUTAGE or ESCUAGE.

11.

These military Tenures (except the Services of grand Serjeanty) were, at the Restoration of King CHARLES, totally abolished, and reduced to free Socage, by Act of Parliament.

CHAP. IV.

Of the MODERN TENURES of Things real.

1.

FREE SOCAGE is a Tenure by any free, certain, and determinate Service.

2.

This Tenure, the Relic of SAXON Liberty, includes PETIT SERJEANTY, Tenure in BURGAGE, and GAVELKIND.

3.

Free Socage Lands partake strongly of the feudal Nature, as well as those in Chivalry: Being
holden

holden; subject to some Service, — at the least, to Fealty; subject to Relief, to Wardship, and to Escheats; but not to Marriage; subject also formerly to Aids, primer Seisin, and Fines for Alienation.

4.

PURE VILLENAGE was a precarious and slavish Tenure, at the absolute Will of the Lord, upon uncertain Services of the basest Nature.

5.

From hence, by tacit Consent or Encroachment, have arisen the modern COPYHOLDS, or Tenure by Copy of Court Roll; in which Lands may be still held at the (nominal) Will of the Lord, (but regulated) according to the Custom of the Manor.

6.

These are subject, like Socage Lands, to Services, Relief, and Escheat; and also to Heriots, Wardship, and Fines upon Descent and Alienation.

7.

PRIVILEGED VILLENAGE, or VILLEIN SOCAGE, is an exalted Species of Copyhold Tenure, upon base, but certain, Services; subsisting only in the antient Demesnes of the Crown; whence the Tenure is denominated the Tenure in ANTIENT DEMESNE.

8.

Copyholds, of antient Demesne, have divers Immunities annexed to their Tenure; but are still held by Copy of Court Roll, according to the Custom of the Manor, though not at the Will of the Lord.

9.

FRANKALMOIGN is a Tenure by spiritual Services; whereby many ecclesiastical and eleemosynary Corporations now hold their Lands and Tenements.

CHAP. V.

Of ESTATES, with respect to their QUANTITY of INTEREST; and, first, of FREEHOLDS of INHERITANCE.

1.

ESTATES in Lands, Tenements, and Hereditaments, are such Interest as a Man hath therein; to ascertain which, may be considered, 1. The QUANTITY of INTEREST. 2. The TIME of ENJOYMENT. 3. The NUMBER and CONNEXIONS of the TENANTS.

2.

Estates, with respect to their QUANTITY of INTEREST, or Duration, are either FREEHOLD, or LESS than FREEHOLD.

3.

A FREEHOLD Estate, in Lands, is such as is created by Livery of Seisin at common Law; or, in Tenements of an incorporeal Nature, by what is equivalent thereto.

4. Free-

4.

Freehold Estates are either Estates of INHERITANCE, OR NOT OF INHERITANCE, viz. for LIFE only: And INHERITANCES are, 1. ABSOLUTE, OR FEE SIMPLE. 2. LIMITED FEES.

5.

Tenant in FEE SIMPLE is he that hath Lands, Tenements, or Hereditaments, to hold to him and his Heirs for ever.

6.

LIMITED FEES are, 1. QUALIFIED, OR BASE, Fees. 2. Fees CONDITIONAL at the common Law.

7.

QUALIFIED, OR BASE, Fees are those which, having a Qualification subjoined thereto, are liable to be defeated when that Qualification is at an End.

8.

CONDITIONAL Fees, at the common Law, were such as were granted to the Donee, and the Heirs of his Body, in exclusion of collateral Heirs.

9.

These were held to be Fees, granted on Condition that the Donee had Issue of his Body; which Condition being once performed by the Birth of Issue, the Donee might immediately aliene the Land: But the Statute *de Donis* was made to prevent such Alienation; and, from the Division of the Fee, by Construction of this Statute, into a particular Estate and a Reversion, the conditional Fees began to be called FEES-TAIL.

10. All

10.

All Tenements real, or favouring of the Realty, are subject to Entails.

11.

Estates tail may be, 1. general, or special; 2. male, or female; 3. given in frank Marriage.

12.

Incident to Estates tail are, 1. Waste, 2. Dower. 3. Curtesy. 4. Bar; — by Fine, Recovery, or lineal Warranty with Affets.

13.

Estates tail are now, by many Statutes and Resolutions, almost brought back to the State of conditional Fees at the common Law.

C H A P. VI.

Of FREEHOLDS, NOT of INHERITANCE.

I.

FREEHOLDS, NOT of INHERITANCE, or for LIFE only, are 1. CONVENTIONAL, or created by the Act of the Parties. 2. LEGAL, or created by Operation of Law.

2.

CONVENTIONAL Estates for LIFE are created by an exprefs Grant for Term of one's own Life, or *pur auter Vie*; or by a general Grant, without expressing any Term at all.

3.

Incident to this, and all other Estates for Life, are Estovers, and Emblements: And to Estates *pur auter Vie* general Occupancy was also incident; as special Occupancy still is, if *cestuy que Vie* survives the Tenant.

4.

LEGAL Estates for LIFE are, 1. Tenancy in TAIL, after POSSIBILITY of Issue EXTINCT. 2. Tenancy by the CURTESY of ENGLAND. 3. Tenancy in DOWER.

5.

Tenancy in TAIL, after POSSIBILITY of Issue EXTINCT, is where one or more are Tenants in special Tail, and, before Issue had, a Person dies from whose Body the Issue was to spring; where-
upon

upon the surviving Tenant becomes Tenant in TAIL, after POSSIBILITY of Issue EXTINCT.

6.

This Estate partakes of both the Incidents to an Estate tail, and those to an Estate for Life.

7.

Tenancy by the CURTESY of ENGLAND is where a Man marries a Woman, seised of an Estate of Inheritance; and by her has Issue, born alive, which was capable of inheriting her Estate; in which Case he shall, upon her Death, hold the Tenements for his own Life, as Tenant by the CURTESY.

8.

Tenancy in DOWER is where a Woman marries a Man, seised of an Estate of Inheritance, of which her Issue might by any Possibility have been Heir; and the Husband dies; the Woman is hereupon entitled to DOWER, or one third Part of the Lands, to hold for her natural Life.

9.

Dower is either by common Law; by special Custom; *ad Ostium Ecclesiæ*; or, *ex Assensu Patris*.

10.

Dower may be forfeited, or barred; particularly by an Estate in JOINTURE.

C H A P. VII.

Of Estates, LESS than FREEHOLD.

I.

E States LESS than FREEHOLD are, 1. Estates for YEARS. 2. Estates at WILL. 3. Estates at SUFFERANCE. 4. Estates on CONDITION.

2.

An Estate for YEARS is where a Man, seised of Lands and Tenements, letteth them to another for a certain Period of Time, which transfers the Interest of the Term; and the Lessee enters thereon, which gives him Possession thereof, but not legal Seisin of the Land.

3.

Incident to this Estate are Estovers; and also Emblements, if it determines before the full End of the Term.

4.

An Estate at WILL is where Lands are let by one Man to another, to hold at the Will of both Parties; and the Lessee enters thereon.

5.

COPYHOLDS are Estates held at the Will of the Lord, (regulated) according to the Custom of the Manor.

6.

An Estate at SUFFERANCE is where one comes
into

into Possession of Land by lawful Title, but keeps it afterwards without any Title at all.

7.

Estates on CONDITION (which may, or may not, be FREEHOLD) are, 1. On Condition IMPLIED. 2. On Condition EXPRESSED. 3. Estates in GAGE. 4. Estates by STATUTE, MERCHANT OR STAPLE. 5. Estates by ELEGIT.

8.

Estates on Condition IMPLIED are where a Grant of an Estate has, from it's Essence and Constitution, a Condition inseparably annexed to it; though none be expressed in Words.

9.

Estates on Condition EXPRESSED are where an express Qualification or Provision is annexed to the Grant of an Estate: On the Breach, or Nonperformance, of which Conditions (either expressed or implied) the Estate so granted may be defeated.

10.

Estates in GAGE, *in Vadio*, or Pledge, are Estates granted as a Security for Money lent; being, 1. *In vivo Vadio*, or LIVING GAGE; where the Profits of Land are granted till a Debt be paid; whereupon the Grantor's Estate revives. 2. *In mortuo Vadio*, in DEAD, or MORT GAGE; where an Estate is granted, on Condition to be void at a Day certain, if the Grantor then repays the Money borrowed; on Failure of which, the Estate becomes absolutely dead to the Grantor.

11. Estates

II.

Estates by STATUTE MERCHANT, or STATUTE STAPLE, are also Estates conveyed to Creditors, in pursuance of certain Statutes, till their Profits have discharged the Debt.

I2.

Estates by ELEGIT are where, in consequence of a judicial Writ so called, Lands are delivered by the Sheriff to a Plaintiff, till their Profits shall satisfy a Debt adjudged to be due by Law.

CHAP. VIII.

Of Estates, with respect to their TIME of
ENJOYMENT.

I.

EStates, with respect to their TIME of ENJOYMENT, are either in immediate POSSESSION, or in EXPECTANCY: Which Estates in EXPECTANCY are created at the same Time, and are Parcel of the same Estates, as those upon which they are expectant. These are, 1. REMAINDERS. 2. REVERSIONS.

2.

A REMAINDER is an Estate limited to take Effect, and be enjoyed, after another PARTICULAR Estate in Possession is determined.

3. There-

3.

Therefore, 1. There must be a precedent particular Estate, in order to support a Remainder. 2. The Remainder must pass out of the Grantor, at the Creation of the particular Estate. 3. The Remainder must vest in the Grantee, during the Continuance, or at the Determination, of the particular Estate.

4.

Remainders are, 1. Vested; where the Estate is fixed to remain to a CERTAIN Person, after the particular Estate is spent. 2. Contingent; where the Estate is limited to take Effect, either to an UNCERTAIN Person, or upon an UNCERTAIN Event.

5.

AN EXECUTORY DEVISE is such a Disposition of Lands, by Will, that no Estate shall vest thereby at the Death of the Devisor, but only upon some future Contingency; without any precedent particular Estate to support it.

6.

A REVERSION is the Residue of an Estate left in the Grantor, to commence in Possession after the Determination of some PARTICULAR Estate granted; To which are incident Fealty, and Rent.

7.

Where two Estates, the one less, the other greater, the one in Possession, the other in Expectancy, meet together in one and the same Person, and in one and the same Right, the less is MERGED in the greater.

C H A P. IX.

*Of Estates, with respect to the NUMBER and
CONNEXIONS of the TENANTS.*

I.

EStates, with respect to the NUMBER and CONNEXIONS of their TENANTS, may be held,
1. In SEVERALTY. 2. In JOINTENANCY. 3. In COPARCENARY. 4. In COMMON.

2.

An Estate in SEVERALTY is where one Tenant holds it in his own sole Right, without any other Person being joined with him.

3.

An Estate in JOINTENANCY is where an Estate is granted to two or more Persons; in which Case the Law construes them to be JOINTENANTS, unless the Words of the Grant expressly exclude such Construction.

4.

Jointenants have an Unity of Estate, of Title, of Time, and of Possession: They are seised *per my & per tout*; and therefore, upon the Decease of one Jointenant, the whole Interest remains to the Survivor.

5.

Jointenancy may be dissolved, by destroying one of it's four constituent Unities.

6. An

6.

An Estate in COPARCENARY is where an Estate of Inheritance descends from the Ancestor to two or more Persons; who are called PARCENERS, and all together make but one Heir.

7.

Parceners have an Unity of Estate, Title, and Possession; but are only seised *per my*, and not *per tout*: Wherefore there is no Survivorship among Parceners.

8.

Incident to this Estate is the Law of HOTCHPOT.

9.

Coparcenary may also be dissolved, by destroying any of it's three constituent Unities.

10.

An Estate in COMMON is where two or more Persons hold Lands by distinct Titles, but by Unity of Possession, because none knoweth his own Severalty.

11.

Tenants in common have therefore an Unity of Possession, (without Survivorship; being seised *per my*, and not *per tout*) but no Unity of Title, Time, or Estate.

12.

This Estate may be created, 1. By dissolving the constituent Unities of the two former. 2. By express Limitation in a Grant: And may be destroyed, 1. By uniting the several Titles in one Tenant. 2. By Partition of the Land.

C H A P. X.

Of the TITLE to Things real, with the Means of acquiring and losing it; and, first, of DESCENT.

1.

A TITLE to, or Right to possess, Things real may be reciprocally acquired or lost, 1. By DESCENT. 2. By PURCHASE.

2.

DESCENT is the Means whereby a Man, on the Death of his Ancestor, acquires a Title to his Estate, in Right of Representation, as his HEIR at Law.

3.

To understand the Doctrine of Descents, we must form a clear Notion of CONSANGUINITY; which is the Connexion, or Relation, of Persons descended from the same Stock or common Ancestor; and it is, 1. LINEAL, where one of the Kinsmen is lineally descended from the other. 2. COLLATERAL, where they are lineally descended, not one from the other, but both from the same common Ancestor^a.

4.

The Rules of Descent, or CANONS of INHERITANCE, observed by the Laws of ENGLAND, are these; ^b

- I. Inheritances shall lineally DESCEND, to the Issue of the Person last actually seised, *in infinitum*; but shall never lineally ASCEND.

^a See APPENDIX, No. I.

^b See APPENDIX, No. II.

II. In lineal Descents, the MALES shall be admitted before the FEMALES.

III. Where there are two or more Males in equal Degree, the ELDEST only shall inherit; but the Females ALL together.

IV. The lineal Descendants, *in infinitum*, of any Person deceased shall REPRESENT their Ancestor; or, stand in the same Place as the Person himself would have done, had he been living.

V. On Failure of LINEAL Descendants, or Issue, of the Person last seized, the Inheritance shall descend to his next COLLATERAL Kindred; or, the Issue lineally derived from his next immediate Ancestor; subject to the three last, and the next succeeding Rules.

VI. Such next collateral Kindred must be of the BLOOD of the FIRST PURCHASOR. — To evidence which, the two following Rules are established.

VII. The collateral Heir of the Person last seized must be his next Kinsman, of the WHOLE Blood.

VIII. In collateral Inheritances, the MALE Stocks shall be preferred to the FEMALE; or, Kinsmen descending from the Blood of the male Ancestors shall be admitted before those from the Blood of the female: Unless where the Lands did, in fact, descend from a Female.

CHAP. XI.

Of PURCHASE in general; and therein of OCCUPANCY, PRESCRIPTION, and ESCHEAT.

1.

PURCHASE, or Perquisition, is the Possession of an Estate, which a Man hath by his own Act or Agreement; and not by the mere Act of Law, or Descent from any of his Ancestors. This includes
 1. OCCUPANCY. 2. PRESCRIPTION. 3. ESCHEAT.
 4. FORFEITURE. 5. BANKRUPTCY. 6. ALIENATION.

2.

OCCUPANCY is Taking the Possession of those Things, which before had no Owner. And it is either general, or special.

3.

PRESCRIPTION is a personal immemorial Usage of enjoying a Right, by a Man, and either his Ancestors, or those whose Estate he hath; which last is called a *que Estate*.

4.

ESCHEAT is where, upon Deficiency of the Tenant's INHERITABLE BLOOD, the Estate falls to the Lord of the Fee.

5.

INHERITABLE BLOOD is wanting to, 1. Monsters. 2. Bastards. 3. The maternal Relations in

paternal Inheritances, and *vice versa*. 4. Kindred of the half Blood. 5. Aliens, and their Issue. 6. Persons attainted of Treason or Felony. 7. Papists, in respect of themselves, by the statute Law.

CHAP. XII.

Of FORFEITURE and BANKRUPTCY.

I.

FORFEITURE is a Punishment annexed by Law to some illegal Act, or Negligence, of the Owner of Things real; whereby the Estate is transferred to another, who is usually the Party injured.

2.

Forfeitures are occasioned, 1. By **CRIMES**. 2. By **ALIENATION**, contrary to Law. 3. By **LAPSE**. 4. By **SIMONY**. 5. By **NONPERFORMANCE** of **CONDITIONS**. 6. By **WASTE**.

3.

Forfeitures for **CRIMES**, or **Misdemeanors**, are for, 1. High Treason. 2. Misprision of Treason. 3. Petit Treason or Felony. 5. Assaults on a Judge, and Batteries, sitting the Courts. 6. *Praemunire*. 7. Popish Recusancy, &c.

4.

ALIENATIONS, or **Conveyances**, which induce a Forfeiture, are, 1. Those in Mortmain, made to Corporations contrary to the statute Law. 2. Those made
made

made to Aliens. 3. Those made by particular Tenants, when larger than their Estates will warrant.

5.

LAPSE is a Forfeiture of the Right of Presentation to a vacant Church, by Neglect of the Patron to present within six calendar Months.

6.

SIMONY is the corrupt Presentation of any one to an ecclesiastical Benefice, whereby that Turn becomes forfeited to the Crown.

7.

For Forfeiture by NONPERFORMANCE of CONDITIONS, see Ch. 7.

8.

WASTE is a Spoil, or Destruction, in any corporeal Hereditaments, to the Prejudice of him that hath the Inheritance.

9.

COPYHOLD Estates may have also other Causes of Forfeiture, according to the Custom of the Manor.

10.

BANKRUPTCY is the Act of becoming a BANKRUPT; that is, a Trader who secretes himself, or does certain other Acts, tending to defraud his Creditors. See Ch. 21.

11.

By Bankruptcy all the Estates of the Bankrupt are transferred to his Commissioners, to be sold for the Benefit of his Creditors.

C H A P. XIII.

*Of ALIENATION by COMMON ASSURANCES ;
and the GENERAL NATURE of DEEDS.*

I.

A LIENATION, Conveyance, or Purchase in it's more limited Sense, is a Means of transferring real Estates, wherein they are voluntarily resigned by one Man, and accepted by another.

2.

This formerly could not be done by a Tenant, without LICENCE from his Lord ; nor by a Lord, without ATTORNMENT of his Tenant.

3.

All Persons are CAPABLE of purchasing ; and all, that are in Possession of any Estates, are CAPABLE of conveying them : — Unless under peculiar Disabilities by Law.

4.

Alienations are made by COMMON ASSURANCES ; which are, 1. By DEED, or Matter in PAIS. 2. By Matter of RECORD. 3. By special CUSTOM. 4. By DEVISE.

5.

In Assurances by DEED may be considered, 1. It's GENERAL NATURE. 2. It's SEVERAL SPECIES.

6. A Deed,

6.

A Deed, in GENERAL, is a Writing sealed and delivered by the Parties; and may be, 1. A Deed indented, or Indenture. 2. A Deed poll.

7.

The REQUISITES of a Deed are, 1. SUFFICIENT PARTIES, and proper SUBJECTMATTER. 2. A good and sufficient CONSIDERATION. 3. WRITING on Paper, or Parchment, duly stamped. 4. Legal and orderly PARTS^c, (as, 1st, the Premises; 2dly, the *Habendum*; 3dly, the *Tenendum*; 4thly, the *Reddendum*; 5thly, the Conditions; 6thly, the Warranty; 7thly, the Covenants; 8thly, the Conclusion, which includes the Date.) 5. READING it, if desired. 6. SEALING, and, in many Cases, SIGNING it also. 7. DELIVERY. 8. ATTESTATION.

8.

A Deed may be AVOIDED, 1. By the Want of any of the Requisites before-mentioned; 2. By subsequent Matter; as, 1st, Rasure or Alteration. 2dly, Defacing the Seal. 3dly, Cancelling it. 4thly, Disagreement of those, whose Consent is necessary. 5thly, Judgment of a Court of Justice.

^c See APPENDIX, No. III. and No. IV.

CHAP. XIV.

Of the SEVERAL SPECIES of DEEDS.

I.

OF Deeds, some serve to CONVEY real Property, some only to CHARGE and DISCHARGE it.

2.

Deeds which serve to CONVEY real Property, or CONVEYANCES, are either by COMMON LAW, or by STATUTE. And, of Conveyances by COMMON LAW, some are ORIGINAL or primary, others DERIVATIVE or secondary.

3.

ORIGINAL Conveyances are, 1. FEOFFMENTS. 2. GIFTS. 3. GRANTS. 4. LEASES. 5. EXCHANGES. 6. PARTITIONS. — DERIVATIVE are, 7. RELEASES. 8. CONFIRMATIONS. 9. SURRENDERS. 10. ASSIGNMENTS. 11. REVOCATIONS.

4.

A FEOFFMENT^d is a Gift of any CORPOREAL Hereditament to another, perfected by LIVERY of SEISIN, or Delivery of bodily Possession from the Feoffor to the Feoffee; without which no freehold Estate can be created at common Law.

5.

A GIFT is properly a Conveyance of Lands in Tail.

^d See APPENDIX, No. III.

6. A GRANT

6.

A GRANT is the regular Method, by common Law, of conveying INCORPOREAL Hereditaments.

7.

A LEASE is the Demise, Granting, or Letting of any Tenement, for a less Term than the Lessor hath therein; or sometimes for a greater; according to the Regulations of the restraining and enabling Statutes,

8.

AN EXCHANGE is a mutual Conveyance of equal Interests, the one in Consideration of the other.

9.

A PARTITION is the Division of an Estate held in Jointenancy, in Coparcenary, or in common, between the respective Tenants, so that each may hold his distinct Part in Severalty.

10.

A RELEASE is a Discharge or Conveyance of a Man's Right in Lands and Tenements to another, that hath some former Estate in Possession therein.

11.

A CONFIRMATION is a Conveyance of an Estate or Right *in esse*, whereby a voidable Estate is made sure, or a particular Estate is encreased.

12.

A SURRENDER is the Yielding up of an Estate for Life, or Years, to him that hath the immediate Remainder or Reversion; wherein the particular Estate may merge.

13. An

13.

An ASSIGNMENT is a Transfer, or Making over to another, of the whole Right one has in any Estate; but usually in a Term, for Life or Years.

14.

A REVOCATION is the Execution of a Power, reserved by the Grantor in a former Deed, of calling back the Estate granted. It differs from a DEFEASANCE, in that the Deed of DEFEASANCE must be of the same Antiquity as the Grant, and that the Deed of REVOCATION may be subsequent.

15.

Conveyances by STATUTE depend much on the Doctrine of USES and TRUSTS: Which are a Confidence reposed in the Terre-Tenant, or Tenant of the Land, that he shall dispose of the Profits according to the Directions of *Cestuy que Use*, or *Cestuy que Trust*.

16.

The Statute of Uses, having transferred all Uses into actual Possession, (or, rather, having drawn the Possession to the Use) has given Birth to three other Species of Conveyance: 1. A COVENANT to stand seised to USES. 2. A BARGAIN and SALE, enrolled. 3. A LEASE and RELEASE^c. Which, owe their present Operation principally to the Statute of Uses.

^c See APPENDIX, No. IV.

17.

Deeds which do not CONVEY, but only CHARGE real Property, and DISCHARGE it, are, 1. OBLIGATIONS^f. 2. RECOGNIZANCES. 3. DEFEASANCES.

CHAP. XV.

Of ASSURANCES by Matter of RECORD.

I.

ASSURANCES by Matter of RECORD are where the Sanction of some Court of Record is called in, to substantiate, and witness, the Transfer of real Property. These are, 1. PRIVATE ACTS of PARLIAMENT. 2. The KING'S GRANTS. 3. FINES. 4. Common RECOVERIES.

2.

PRIVATE ACTS of PARLIAMENT are a Species of Assurances, calculated to give (by the transcendent Authority of Parliament) such reasonable Powers or Relief, as are beyond the Reach of the ordinary Course of Law.

3.

The KING'S GRANTS, contained in Charters or Letters patent, are all entered on Record, for the Dignity of the royal Person, and Security of the royal Revenue.

^f See APPENDIX, No. V.

4.

A FINE^s (sometimes said to be a Feoffment of Record) is an amicable Composition and Agreement of an actual, or fictitious, Suit; whereby the Estate in question is acknowledged to be the Right of one of the Parties.

5.

The PARTS of a Fine are, 1. The Writ of Covenant. 2. The Licence to agree. 3. The Concord. 4. The Note. 5. The Foot. To which the Statute hath added, 6. Proclamations.

6.

Fines are of four KINDS: 1. *Sur Cognizance de Droit, come ceo que il ad de son Done.* 2. *Sur Cognizance de Droit tantum.* 3. *Sur Concessit.* 4. *Sur Done, Grant, et Render*; which is a double Fine.

7.

The FORCE and EFFECT of Fines (when levied by such as have themselves any Interest in the Estate) are to assure the Lands in question to the Cognizee, by barring the respective Rights of Parties, Privies, and Strangers.

8.

A common RECOVERY^h is by an actual, or fictitious, Suit or Action for Land, brought against the Tenant of the Freehold; who thereupon vouches another, who undertakes to warrant the Tenant's Title: But, upon such Vouchee's making Default, the Land is RECOVERED by Judgment at Law against the Tenant; who, in return, obtains Judgment against

^g See APPENDIX, No. VI.

^h See APPENDIX, No. VII.

the Vouchee to recover Lands of equal Value in Recompence.

9.

The FORCE and EFFECT of a Recovery are to assure Lands to the Recoveror, by barring Estates tail, and all Remainders and Reversions expectant thereon; provided the Tenant in Tail either suffer, or be vouched in, such Recovery.

10.

The USES of a Fine or Recovery may be directed by, 1. Deeds to LEAD such Uses; which are made previous to the Levying or Suffering them. 2. Deeds to DECLARE the Uses; which are made subsequent.

CHAP. XVI.

Of ASSURANCES by special CUSTOM, and DEVISE.

1.

ASSURANCES by special CUSTOM are confined to the Transfer of COPYHOLD Estates.

2.

This is effected by, 1. SURRENDER of the Tenant into the Hands of the Lord to the Use of another, according to the Custom of the Manor. 2. PRESENTMENT, by the Tenants or Homage, of such Surrender. 3. ADMITTANCE of the Surrender
deree

deree by the Lord, according to the Uses expressed in such Surrender.

3.

ADMITTANCE may also be had upon original GRANTS to the Tenant from the Lord, and upon DESCENTS to the Heir from the Ancestor.

4.

DEVISE is a Disposition of Land and Tenements, contained in the last Will and Testament of the Owner.

5.

This was not permitted by the common Law, as it stood since the Conquest; but was introduced by the statute Law.

CHAP. XVII.

Of THINGS PERSONAL, or CHATTELS; their DISTRIBUTION; and the PROPERTY which may be had therein.

I.

THINGS PERSONAL are comprehended under the general Name of CHATTELS; which include whatever wants either the Duration, or the Immobility, attending Things real.

2.

In these are to be considered, 1. Their DISTRIBUTION. 2. The PROPERTY of them. 3. The TITLE to that Property.

3. As

3.

As to the DISTRIBUTION of Chattels, they are,

1. Chattels REAL. 2. Chattels PERSONAL.

4.

Chattels REAL are such Quantities of Interest in Things IMMOVEABLE, or Lands and Tenements, as are short of the Duration of Freeholds; being limited to a Time certain, beyond which they cannot subsist. See Ch. 7.

5.

Chattels PERSONAL are Things MOVEABLE; which may be transferred from Place to Place, together with the Person of the Owner.

6.

PROPERTY, in Chattels personal, is either in POSSESSION, or in ACTION.

7.

Property in POSSESSION, where a Man has the actual Enjoyment of the Thing, is, 1. ABSOLUTE.

2. QUALIFIED.

8.

ABSOLUTE Property is where a Man hath such an exclusive Right in the Thing, that it cannot cease to be his, without his own Act or Default.

9.

QUALIFIED Property is such as is not, in it's Nature, permanent; but may sometimes subsist, and at other times not subsist.

10. This

10.

This may arise, 1. Where the Subject is incapable of absolute Ownership. 2. From the peculiar Circumstances of the Owners.

11.

Property in ACTION, is where a Man hath not the actual OCCUPATION of the Thing; but only a RIGHT to it, arising upon some Contract, and recoverable by an Action at Law.

12.

The Property of Chattels personal is liable to Remainders, if created by Will; to Jointenancy, and to Tenancy in common.

CHAP. XVIII.

Of the TITLE to Things personal, or Chattels, by OCCUPANCY, PREROGATIVE, and SUCCESSION.

I.

THE TITLE to Things personal may be acquired or lost by, 1. OCCUPANCY. 2. PREROGATIVE. 3. SUCCESSION. 4. CUSTOM. 5. MARRIAGE. 6. FORFEITURE. 7. JUDGMENT. 8. GRANT. 9. CONTRACT. 10. BANKRUPTCY. 11. TESTAMENT. 12. ADMINISTRATION.

2. Occu-

2.

OCCUPANCY still gives the first Occupant a Right to those few Things, which have no legal Owner, or which are incapable of permanent Ownership.

3.

By PREROGATIVE is vested in the Crown, or it's Grantees, the Property of the royal Revenue; (See Book I. Ch. 9, 10.) and also the Property of all Game in the Kingdom, with the Right of pursuing and taking it.

4.

By SUCCESSION the Right of Chattels is also vested in Corporations AGGREGATE; and likewise in such SOLE Corporations, as are the Heads and Representatives of Corporations aggregate.

CHAP. XIX.

Of CUSTOM, MARRIAGE, FORFEITURE, and JUDGMENT.

1.

BY CUSTOM, obtaining in particular Places, a Right may be acquired in Chattels: The most usual of which Customs are those relating to, 1. HERIOTS. 2. MORTUARIES. 3. HEIR-LOOMS.

2.

HERIOTS are either Heriot-SERVICE, which differs little from a Rent; or Heriot-CUSTOM, which is a customary Tribute, of Goods and Chat-

E

tels,

tels, payable to the Lord of the Fee on the Decease of the Owner of Land.

3.

MORTUARIES are a customary Gift due to the Minister in many Parishes on the Death of his Parishioners.

4.

HEIR-LOOMS are such personal Chattels, as descend by special Custom to the Heir, along with the Inheritance of his Ancestor.

5.

By MARRIAGE the Chattels of the Wife are vested in the Husband, in the same Degree of Property, and with the same Powers, as the Wife (when sole) had over them; provided he reduces them to Possession.

6.

The Wife also acquires, by MARRIAGE, a Property in her *Paraphernalia*.

7.

By FORFEITURE, for Crimes and Misdemeanors, the Right of Goods and Chattels may be transferred from one Man to another; either in part, or totally.

8.

Total Forfeitures of Goods arise from, 1. Treason, and Misprision thereof. 2. Felony. 3. Excusable Homicide. 4. Outlawry. 5. Flight. 6. Standing mute. 7. Atrocious Contempts. 8. *Praemunire*. 9. Pretended Prophecies. 10. Owling. 11. Residing abroad of Artificers. 12. Challenges to fight for Debts at Play.

9. By

9.

By JUDGMENT, consequent on a Suit at Law, a Man may, in some Cases, not only RECOVER, but originally ACQUIRE, a Right to personal Property.

CHAP. XX.

Of GRANTS and CONTRACTS.

1.

A GRANT, or GIFT, is a voluntary Conveyance of a Chattel personal in Possession, without any Consideration or Equivalent.

2.

A CONTRACT is an Agreement, upon sufficient Consideration, to do or not to do a particular Thing: And, by such Contract, any personal Property (either in Possession, or in Action) may be transferred.

3.

Contracts may be either exprefs, or implied; — either executed, or executory.

4.

The CONSIDERATION of Contracts is, 1. A good Consideration. 2. A valuable Consideration.

5.

The most usual SPECIES of personal Contracts are, 1. SALE or EXCHANGE. 2. BAILMENT. 3. HIRING and BORROWING. 4. DEBT.

6.

SALE or EXCHANGE is a Transmutation of Property from one Man to another, in Consideration of some Recompence in Value.

7.

BAILMENT is the Delivery of Goods in Trust; upon a Contract, exprefs or implied, that the Trust shall be faithfully performed by the Bailee.

8.

HIRING or BORROWING is a Contract, whereby the Possession of Chattels is transferred for a particular Time, on Condition that the identical Goods (or, sometimes, their Value) be restored at the Time appointed; together with (in case of **HIRING**) a Stipend or Price for the Use.

9.

This Price, being calculated to answer the Hazard, as well as Inconvenience, of Lending, gives Birth to the Doctrine of **INTEREST**, or **USURY**, upon Loans; and, consequently, to the Doctrine of **INSURANCE**.

10.

DEBT is any Contract, whereby **MONEY** becomes due to the Creditor. This is, 1. A Debt of **RECORD**. 2. A Debt upon **SPECIAL** Contract. 3. A Debt upon **SIMPLE** Contract; which last includes **Paper-Credit**, or **BILLS of EXCHANGE**, and **PROMISSORY NOTES**.

C H A P. XXI.

Of BANKRUPTCY.

I.

BANKRUPTCY (as defined in Ch. 12.) is the Act of becoming a Bankrupt;

2.

Herein may be considered. 1. WHO may become a Bankrupt. 2. The ACTS, whereby he may become a Bankrupt. 3. The PROCEEDINGS on a Commission of Bankrupt. 4. How his PROPERTY is transferred thereby.

3.

Persons, of full Age, USING the TRADE of Merchandize, by buying, and selling, and seeking their Livelyhood thereby, are liable to become Bankrupts for Debts of a sufficient Amount.

4.

A Trader, who endeavours to avoid his Creditors, or evade their just Demands, by any of the Acts specified in the several Statutes of Bankruptcy, doth thereby commit an ACT of Bankruptcy.

5.

The PROCEEDINGS on a Commission of Bankrupt, so far as they affect the Bankrupt himself, are principally by, 1. Petition. 2. Commission. 3. Declaration of Bankruptcy. 4. Choice of Assignees. 5. The Bankrupt's Surrender. 6. His Exami-

Examination. 7. His Discovery. 8. His Certificate. 9. His Allowance. 10. His Indemnity.

6.

The PROPERTY of a Bankrupt's personal Estate is, upon the Act of Bankruptcy, vested by Law in the Commissioners; who assign the same to the Assignees: And they, when they have collected the whole, distribute it by equal Dividends among all the Creditors.

CHAP. XXII.

Of TESTAMENT and ADMINISTRATION.

I.

Concerning TESTAMENTS and ADMINISTRATIONS, considered jointly, are to be observed, 1. Their ORIGINAL and ANTIQUITY. 2. WHO may make a Testament. 3. It's NATURE and INCIDENTS. 4. What are EXECUTORS and ADMINISTRATORS. 5. Their OFFICE and DUTY.

2.

TESTAMENTS have subsisted in ENGLAND immemorially; whereby the Deceased was at Liberty to dispose of his personal Estate, reserving antiently to the Wife and Children their REASONABLE PART of his Effects.

3. The

3.

The Goods of **INTESTATES** belonged antiently to the King; who granted them to the Prelates to be disposed in pious Uses: But, on their Abuse of this Trust in the times of Popery, the Legislature compelled them to delegate their Power to **ADMINISTRATORS** expressly provided by Law.

4.

ALL Persons may make a Testament, unless disabled by, 1. Want of Discretion. 2. Want of Freewill. 3. Criminal Conduct.

5.

TESTAMENTS are the legal Declaration of a Man's Intentions, which he wills to be performed after his Death. These are, 1. Written. 2. Nuncupative.

6.

An **EXECUTOR** is he, to whom a Man by his Will commits the Execution thereof.

7.

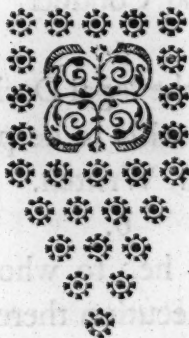
ADMINISTRATORS are, 1. *Durante minore Aetate* of an infant Executor or Administrator. 2. *Cum Testamento annexo*; when no Executor is named, or the Executor refuses to act. 3. General Administrators; in pursuance of the Statutes of **EDWARD III.** and **HENRY VIII.**

8.

The **OFFICE** and **DUTY** of Executors (and, in many points, of Administrators also) are, 1. To bury the Deceased. 2. To prove the Will, or take out Administration. 3. To make an Inventory. 4. To collect the Goods and Chattels. 5. To pay Debts;

x Debts; observing the Rules of Priority. 6. To pay Legacies, either general or specific; if they be vested, and not lapsed. 7. To distribute the undivided Surplus, according to the Statute of Distributions.

*The Lectures of this Book ended the
10th of April.*



BOOK THE THIRD.

Lectures begun the 26th of April.

Of PRIVATE WRONGS, or CIVIL
INJURIES.

CHAPTER I.

Of CIVIL INJURIES, and their REDRESS, by the
mere ACT of the PARTIES, or the mere OPE-
RATION of LAW.

I.

WRONGS are the Privation of RIGHT; and are,
1. PRIVATE. 2. PUBLIC.

2.

PRIVATE WRONGS, or CIVIL INJURIES, are an
Infringement, or Privation, of the civil Rights of
Individuals, considered as Individuals.

3.

The REDRESS of civil Injuries is one principal
Object of the LAWS of ENGLAND.

4.

This REDRESS is effected by, 1. The mere ACT
of the PARTIES. 2. The mere OPERATION of
LAW. 3. By BOTH together, or SUIT in COURTS.

5. RE-

5.

REDRESS, by the mere ACT of the PARTIES, is that which arises, 1. From the SOLE ACT of the Party injured. 2. From the JOINT ACT of all the Parties.

6.

Of the first Sort are, 1. Self-Defence. 2. Recaption of Goods. 3. Entry on Lands and Tehelements. 4. Abatement of Nufances. 5. Distress, for Rent, or for Damage. 6. Seifing of Heriots.

7.

Of the second Sort are, 1. Accord. 2. Arbitration.

8.

REDRESS, effected by the mere OPERATION of LAW, is, 1. Where a Creditor is Executor or Administrator, and is thereupon allowed to retain his own Debt. 2. In the Case of Remitter; where one, who has a good Title to Lands, &c, comes into Possession by a BAD one, and is thereupon remitted to his antient good Title, which protects his ill acquired Possession.

CHAP. II.

*Of COURTS in general; and, first, of the PUBLIC
Courts of COMMON LAW and EQUITY.*

I.

REDRESS, that is effected by the ACT both of
LAW and of the PARTIES, is by SUIT or AC-
TION in the COURTS of Justice.

2.

Herein may be considered, 1. The COURTS them-
selves. 2. The COGNIZANCE of Wrongs, or Inju-
ries therein. And, of COURTS, 1. Their NATURE
and INCIDENTS. 2. Their several SPECIES.

3.

A COURT is a Place wherein Justice is judicially
administred, by Officers delegated by the Crown :
Being either a Court of Record, or not of Record.

4.

INCIDENT to all Courts are a Plaintiff, Defend-
ant, and Judge: And, with us, there are also usu-
ally Attorneys, and Advocates or Counsel, viz. ei-
ther Barristers, or Serjeants, at Law.

5.

Courts of Justice, with regard to their several
SPECIES, are, 1. Of a PUBLIC, or general, Juris-
diction throughout the Réalm. 2. Of a PRIVATE,
or special, Jurisdiction.

6. PUB-

6.

PUBLIC Courts of Justice are, 1. The Courts of COMMON LAW and EQUITY. 2. The ECCLESIASTICAL Courts. 3. The MILITARY Courts. 4. The MARITIME Courts.

7.

The general and public Courts of COMMON LAW and EQUITY are, 1. The Court of Piepoudre. 2. The Court-Baron. 3. The Hundred Court. 4. The County Court. 5. The Court of common Pleas. 6. The Court of King's Bench. 7. The Court of Exchequer. 8. The Court of Chancery. (which two last are Courts of EQUITY as well as LAW) 9. The Court of Exchequer-Chamber. 10. The House of Peers. To which may be added, as Auxiliaries, 11. The Courts of Assize and *Nisi prius*.

C H A P. III.

*Of the Residue of PUBLIC Courts; and those also
of a PRIVATE Jurisdiction.*

I.

ECCELESIASTICAL Courts, (which were separated from the TEMPORAL by WILLIAM the Conqueror) or Courts CHRISTIAN, are, 1. The Court of the Archdeacon. 2. The Court of the Bishop's Consistory. 3. The Court of Arches. 4. The Court of Peculiars. 5. The Prerogative Court. 6. The Court of Delegates. 7. The Court of Review.

2.

The only permanent MILITARY Court is that of Chivalry; the Courts martial, annually established by Act of Parliament, being only temporary.

3.

MARITIME Courts are, 1. The Court of Admiralty. 2. The Court of Delegates; or, 3. The Lords of the Privy Council, and others, authorized by the King's Commission, for Prize-Causes.

4.

Courts of a PRIVATE or special Jurisdiction are,
1. The Forest Courts; including the Courts of Attachments, Regard, Sweinmote, and Justice-Seat.
2. The Court of Commissioners of Sewers. 3. The Court of the Marshalsea and the Palace Court.
4. The Courts of the Principality of WALES.

5. The

5. The Court of the Duchy of LANCASTER. 6. The Courts of the Counties palatine, and other royal Franchises. 7. The Stannary Courts. 8. The Courts of LONDON and other Corporations: — To which may be referred the Courts of Requests, or Courts of Conscience, and the modern Regulations of certain Courts Baron and County Courts. 9. The Courts of the two Universities.

CHAP. IV.

Of the COGNIZANCE of civil Injuries.

I.

ALL civil Injuries are COGNIZABLE either in the Courts ECCLESIASTICAL, MILITARY, MARITIME, or those of the COMMON LAW.

2.

Injuries cognizable in the ECCLESIASTICAL Courts are, 1. PECUNIARY. 2. MATRIMONIAL. 3. TESTAMENTARY.

3.

PECUNIARY Injuries, here cognizable, are, 1. SUBTRACTION of TITHES. For which the Remedy is by Suit to compel their Payment, or an Equivalent, and also their double Value. 2. NON-PAYMENT of ecclesiastical DUES. Remedy: By Suit for Payment. 3. SPOLIATION. Remedy: By Suit for Restitution. 4. DILAPIDATIONS, &c. Remedy: By Suit for Damages.

4. MA-

4.

MATRIMONIAL Injuries are, 1. JACTITATION of MARRIAGE. Remedy: By Suit for perpetual Silence. 2. SUBTRACTION of CONJUGAL Rights. Remedy: By Suit for Restitution. 3. INHABILITY for the Marriage State. Remedy: By Suit for Divorce. 4. REFUSAL of decent MAINTENANCE to the Wife. Remedy: By Suit for Alimony.

5.

TESTAMENTARY Injuries are, 1. DISPUTING the Validity of WILLS. Remedy: By Suit to establish them. 2. OBSTRUCTING of ADMINISTRATIONS. Remedy: By Suit for the Granting them. 3. SUBTRACTION of LEGACIES. Remedy: By Suit for the Payment.

6.

The Course of Proceedings herein is much conformed to the civil and canon Laws: But their only compulsive Process is that of Excommunication.

7.

Civil Injuries, cognizable in the Court MILITARY, or Court of Chivalry, are, 1. Injuries in point of HONOUR. Remedy: By Suit for honourable Amendments. 2. ENCROACHMENTS in COAT-ARMOUR, &c. Remedy: By Suit to remove them. The Proceedings are in a summary Method.

8.

Civil Injuries, cognizable in the Courts MARITIME, are Injuries, in their Nature of common Law Cognizance, but arising wholly upon the Sea, and not within the Precincts of any County. The Proceedings

ceedings are herein also much conformed to the civil Law.

9.

All other Injuries are cognizable only in the Courts of COMMON LAW: Of which in the Remainder of this Book.

10.

Two of them are however commiffible by these, and other, inferior Courts; viz. 1. REFUSAL or NEGLECT of JUSTICE. Remedies: By Writ of *Procedendo*, or *Mandamus*. 2. ENCROACHMENT of JURISDICTION. Remedy: By Writ of Prohibition.

CHAP. V.

Of Injuries, and their Remedies, at the COMMON LAW; and, first, of Injuries to the Rights of PERSONS.

1.

IN treating of the Cognizance of Injuries by the Courts of COMMON LAW, may be considered. 1. The INJURIES themselves, and their respective REMEDIES. 2. The PURSUIT of those Remedies in the several Courts.

2.

INJURIES, cognizable by the Courts of COMMON LAW, are in general REMEDIED by putting the Party injured into Possession of that Right, whereof he is unjustly deprived.

3. This

3.

This is effected, 1. By DELIVERY of the THING detained to the rightful Owner. 2. Where that Remedy is either impossible or inadequate, by giving the Party injured a SATISFACTION in DAMAGES.

4.

The Instruments, by which these Remedies may be obtained, are SUITS or ACTIONS; which are defined to be the legal Demand of one's Right: And these are, 1. Personal. 2. Real. 3. Mixed.

5.

Injuries (whereof some are with, others without, FORCE) are, 1. Injuries to the Rights of PERSONS. 2. Injuries to the Rights of PROPERTY: And the former are, 1. Injuries to the ABSOLUTE, 2. Injuries to the RELATIVE, Rights of Persons.

6.

The ABSOLUTE Rights of Individuals are, 1. PERSONAL SECURITY. 2. PERSONAL LIBERTY. 3. PRIVATE PROPERTY. (See Book I. Ch.4.) To which the Injuries must be correspondent.

7.

Injuries to PERSONAL SECURITY are, 1. Against a Man's LIFE. 2. Against his BODY. 3. Against his HEALTH. 4. Against his REPUTATION.—The first must be referred to the next Book.

8.

Injuries to the BODY are, 1. THREATS. 2. ASSAULT. 3. BATTERY. 4. MAYHEM. Remedy: By Action of Trespass, *vi & armis*; for Damages.

F

9. Injuries

9.

Injuries to HEALTH, by any unwholesome Practices, are remedied by a special Action of Trespafs, on the Cafe; for Damages.

10.

Injuries to REPUTATION are, 1. Slanderous and malicious WORDS. Remedy: By Action on the Cafe; for Damages. 2. LIBELS. Remedy: The same. 3. Malicious PROSECUTIONS. Remedy: By Action of Conspiracy, or on the Cafe; for Damages.

11.

The sole Injury to PERSONAL LIBERTY is FALSE IMPRISONMENT. Remedies: 1. By Writ of *Habeas Corpus*; to remove the Wrong. 2. By Action of Trespafs; to recover Damages.

12.

For Injuries to PRIVATE PROPERTY, see the next Chapter.

13.

Injuries to RELATIVE Rights affect, 1. HUSBANDS. 2. PARENTS. 3. GUARDIANS. 4. MASTERS.

14.

Injuries to an HUSBAND are, 1. ABDUCTION, or taking away his Wife. Remedy: By Action of Trespafs, *de Uxore rapta & abducta*; to recover Possession of his Wife, and Damages. 2. CRIMINAL CONVERSATION with her. Remedy: By Action on the Cafe; for Damages. 3. BEATING her. Remedy:

dy: By Action on the Case, *per quod Consortium amissit*; for Damages.

15.

The only Injury to a PARENT, or GUARDIAN, is the ABDUCTION of their Children or Wards. Remedy: By Action of Trespass, *de Filiis, vel Custodiis, raptis vel abductis*; to recover Possession of them, and Damages.

16.

Injuries to a MASTER are, 1. RETAINING his Servants. Remedy: By Action on the Case; for Damages. 2. BEATING them. Remedy: By Action on the Case, *per quod Servitium amisit*; for Damages.

CHAP. VI.

Of Injuries to PERSONAL PROPERTY.

1.

INjuries to the Rights of PROPERTY are either to those of PERSONAL, or REAL, Property.

2.

PERSONAL Property is either in POSSESSION, or in ACTION.

3.

Injuries to personal Property in POSSESSION are, 1. By DISPOSSESSION. 2. By DAMAGE, while the Owner remains in Possession.

F 2

4. Dis-

4.

DISPOSSESSION may be effected, 1. By unlawfully TAKING. 2. By unlawfully DETAINING.

5.

For the unlawful TAKING of Goods and Chattels personal, the Remedy is, 1. Actual Restitution; which is obtained by Action of Replevin. 2. Satisfaction in Damages; by Action of Trespass, or Trover.

6.

For the unlawful DETAINING of Goods lawfully taken, the Remedy is also, 1. Actual Restitution; by Action of Replevin, or Detinue. 2. Satisfaction in Damages; by Action on the Case, for Trover and Conversion.

7.

For DAMAGE to personal Property, while in the Owner's Possession, the Remedy is in Damages; by Action of Trespass *vi & armis*, or by Action of Trespass on the Case.

8.

Injuries to personal Property in ACTION arise by Breach of CONTRACTS, 1. EXPRESS. 2. IMPLIED.

9.

Breach of EXPRESS Contracts are, 1. By NONPAYMENT of DEBTS. Remedy: 1st, Specific Payment; recoverable by Action of Debt. 2dly, Damages for Nonpayment; recoverable by Action on the Case. 2. By NONPERFORMANCE of COVENANTS. Remedy: By Action of Covenant; 1st, to recover Damages, in Covenants personal; 2dly, to compel

compel Performance, in Covenants real. 3. NONPERFORMANCE OF PROMISES OR ASSUMPSITS. Remedy: By Action on the Case; for Damages.

10.

IMPLIED Contracts are such as arise, 1. From the Nature and Constitution of GOVERNMENT. 2. From REASON and the Construction of Law.

11.

Breaches of Contracts, implied in the Nature of GOVERNMENT, are the NONPAYMENT of Money which the Laws have directed to be paid. Remedy: Action of Debt; to compel the specific Payment; or, sometimes, Action on the Case; for Damages.

12.

Breaches of Contracts, implied in REASON and Construction of Law, are the NONPERFORMANCE of legal presumptive ASSUMPSITS: For which the Remedy is in Damages; by an Action on the Case, on the implied ASSUMPSITS, 1. Of a *Quantum meruit*. 2. Of a *Quantum valebat*. 3. Of receiving Money to another's Use. 4. Of an *Insimul computassent*, on an Account stated, (the Remedy on an Account unstated being by Action of Account.) 5. Of performing one's Duty, in any Employment, with Integrity, Diligence, and Skill.

C H A P. VII.

*Of Injuries to REAL Property; and, first of DIS-
POSSESSION, or OUSTER, of the SUBJECT,
from his FREEHOLD.*

I.

INjuries affecting REAL Property are, 1. OUSTER.
2. TRESPASS. 3. NUSANCE. 4. WASTE.
5. SUBTRACTION. 6. DISTURBANCE.

2.

OUSTER is the Amotion of Possession; and is,
1. Of a private SUBJECT. 2. Of the KING, and
his Grantees. That of a SUBJECT is, 1. From
FREEHOLDS. 2. From CHATTELS real.

3.

Ouster from FREEHOLDS is effected by, 1. A-
BATEMENT. 2. INTRUSION. 3. DISSEISIN. 4. DIS-
CONTINUANCE. 5. DEFORCEMENT.

4.

ABATEMENT is the Entry of a Stranger, after
the Death of the Ancestor, before the Heir.

5.

INTRUSION is the Entry of a Stranger, after a
particular Estate of Freehold is determined, before
him in Remainder or Reversion.

6.

DISSEISIN is a wrongful Putting out of him that
is seised of the Freehold.

7. Dis-

7.

DISCONTINUANCE is where Tenant in Tail, or the Husband of Tenant in Fee, make a larger Estate of the Land than the Law alloweth.

8.

DEFORCEMENT is any other Detainer of the Freehold from him who hath the Property, but who never had the Possession.

9.

The universal Remedy for all these is Delivery of Possession; and, sometimes, Damages for the Detention. This is effected, 1. By mere ENTRY. 2. By Action POSSESSORY. 3. By Writ of RIGHT.

10.

Mere ENTRY on Lands, by him who hath the apparent Right of Possession, will (if PEACEABLE) devert the MERE POSSESSION of a Wrongdoer. But FORCIBLE Entries are remedied by immediate Restitution, to be given by a Justice of the Peace.

11.

Where the Wrongdoer hath not only mere Possession, but also an APPARENT Right of Possession, this may be deverted by him who hath the ACTUAL Right of Possession, by means of the POSSESSORY Actions of WRIT of ENTRY, or ASSISE.

12.

A^x WRIT of ENTRY is a real Action, which disproves the Title of the Tenant, by shewing the unlawful Means, under which he gained Possession. And it may be brought either against the Wrongdoer

** See Appendix No. 7. l. v. -*

doer himself, or in the Degrees called the *Per*, the *Per* and *Cui*, and the *Post*.

13.

An ASSISE is a real Action, which proves the Title of the Demandant, by shewing his own, or his Ancestor's, Possession. And it may be brought either to remedy Abatements; viz. the Assise of *Mortd'ancestor*, &c: Or to remedy recent Disseisins; viz. the Assise of *novel Disseisin*.

14.

Where the Wrongdoer hath gained the actual Right of POSSESSION, he who hath the Right of PROPERTY can only be remedied by a Writ of RIGHT, or some Writ of a similar Nature. As,
 1. Upon the DISCONTINUANCE of Tenant in Tail. Remedy: By Writ of Formedon. 2. Upon RECOVERY in a possessory Action, had against Tenants of particular Estates by their own Default. Remedy: By Writ of *Quod ei deforceat*. 3. Upon RECOVERY in a possessory Action, had upon the Merits. 4. Upon the STATUTE of LIMITATIONS. Remedy, in both Cases: By a mere Writ of RIGHT, the highest Writ in the Law.

CHAP. VIII.

Of the remaining Species of OUSTER.

1.

Ouster of a Subject from CHATTELS real is,
 1. From Estates by STATUTE and ELEGIT;
 2. From an Estate for YEARS.

2.

Ouster, from Estates by STATUTE or ELEGIT, is effected by a Kind of DISSEISIN. Remedy: Restitution, and Damages; by Assise of *novel Disseisin*.

3.

Ouster, from an Estate for YEARS, is effected by a like Disseisin or EJECTMENT. Remedy: Restitution, and Damages; 1. By Writ of *Ejectione Firmæ*.
 2. By Writ of *Quare ejecit infra Terminum*.

4.

A Writ of *Ejectione Firmæ*, or Action of Trespass in Ejectment, lieth where Lands, &c, are let for a Term of Years, and the Lessee is ousted or ejected from his Term; in which Case he shall recover Possession of his Term, and Damages.

5.

This is now the usual Method of trying Titles to Land, instead of an Action real: viz. By, 1. The Claimant's making an actual (or supposed) Lease upon the Land to the Plaintiff. 2. The Plaintiff's actual (or supposed) Entry thereupon. 3. His actual (or supposed) Ouster and Ejectment by the Defendant:

fendant: For which Injury this Action is brought, either against the Tenant, or (more usually) against some casual, or fictitious, Ejector; in whose Stead the Tenant may be admitted Defendant, on Condition that the Lease, Entry, and Ouster be confessed, and that nothing else be disputed but the Merits of the Title, claimed by the Lessor of the Plaintiffⁱ.

6.

A Writ of *Quare ejecit infra Terminum* is an Action of a similar Nature; only not brought against the Wrongdoer or Ejector himself, but such as are in Possession under his Title.

7.

Ouster of the KING, or his Grantees, is, 1. That of a Nature similar to the former; but differing in the Means of it's Remedy; which is, Delivery of Possession, in consequence of an Inquest of Office: Which Process extends also to Chattels personal. 2. USURPATION of Offices and Franchises. Remedy: By Writ of *Quo Warranto*; to seize them into the King's Hands. 3. REFUSAL to ADMIT, or wrongful REMOVAL of, an Officer. Remedy: 1st, By Writ of *Mandamus*, unless Cause; to admit or restore him: To which if a false Cause be returned, the Remedy is by Action on the Case; for Damages. 2dly, By peremptory *Mandamus*.

ⁱ See APPENDIX, No. VIII. §. 1, 2, 3.

C H A P. IX.

Of TRESPASS, NUSANCE, and WASTE.

1.

TRESPASS is an Entry upon, and Damage done to, another's Lands, by one's self, or one's Cattel; without any lawful Authority, or Cause of Justification: Which is called a Breach of his Close. Remedy: Damages; by Action of Trespass, *quare Clausum fregit*: Besides that of Distress, Damage feasant.

2.

NUSANCE, or Annoyance, is any thing that worketh Damage, or Inconvenience: And it is either a PUBLIC and COMMON Nufance, of which in the next Book; or, a PRIVATE Nufance, which is any thing done to the Hurt or Annoyance of, 1. The corporeal, 2. The incorporeal Hereditaments of another.

3.

The Remedies, for a private Nufance, (besides that of Abatement) are, 1. Damages; by Action on the Case; (which also lies for special Prejudice by a public Nufance.) 2. Removal thereof, and Damages; by Assise of Nufance. 3. Like Removal, and Damages; by Writ of *Quod permittat prosternere*.

4.

WASTE is a Spoil and Destruction in Lands and Tenements, to the Injury of him who hath, 1. A
Right

Right of Common in the Lands. 2. The Remainder or Reversion of the Inheritance.

5.

The Remedies, for a Commoner, are, Restitution, and Damages; by Assise of Common: Or, Damages only; by Action on the Case.

6.

The Remedy, for him in Remainder, or Reversion, is, 1. Preventive: By Writ of Estrepement at common Law, or Injunction out of Chancery; to stay Waste. 2. Corrective: By Action of Waste; to recover the Place wasted, and Damages.

CHAP. X.

Of SUBTRACTION, and DISTURBANCE.

I.

SUBTRACTION is when one, who owes Services to another, withdraws or neglects to perform them. This may be, 1. Of Rents, and other Services, due by TENURE. 2. Of those due by CUSTOM.

2.

For Subtraction of Rents and Services, due by TENURE, the Remedy is, 1. By Distress; to compel the Payment, or Performance. 2. By Action of Debt; to compel the Payment. 3. By Writ of *Cessavit*; — and 4. By Writ of Right *sur Disclaimer*; — to recover the Land itself.

3. For

3.

For Subtraction of Services, due by CUSTOM, the Remedy is, 1. By Writ of *Seſſa ad Molendinum, Furnum, Torrale, &c*; to compel the Performance, and recover Damages. 2. By Action on the Caſe; for Damages only.

4.

DISTURBANCE is the Hindering, or Disquieting, the Owners of an incorporeal Hereditament, in their regular and lawful Enjoyment of it.

5.

Disturbances are, 1. Of FRANCHISES. 2. Of COMMONS. 3. Of WAYS. 4. Of TENURE. 5. Of PATRONAGE.

6.

Disturbance, of FRANCHISES, is remedied by a ſpecial Action on the Caſe; for Damages.

7.

Disturbance, of COMMON, is, 1. INTERCOMMONING without Right. Remedy: Damages; in an Action on the Caſe, or of Treſpaſs: Beſides Diſtreſs, Damage feaſant; to compel Satisfaction. 2. SURCHARGING the Common. Remedies: Diſtreſs, Damage feaſant; to compel Satisfaction: Action on the Caſe; for Damages: Or, Writ of Admeaſurement of Paſture; to apportion the Common; — and Writ *de ſecunda Superoneratione*; for the ſuper-numerary Cattel, and Damages. 3. ENCLOSURE, or Obſtruction. Remedies: Reſtitution of the Common, and Damages; by Aſſiſe of *novel Diſſeiſin*,
and

and by Writ of *Quod permittat*: Or, Damages only; by Action on the Case.

8.

Disturbance, of WAYS, is the Obstruction, 1. Of a Way in gross, by the Owner of the Land. 2. Of a Way appendant, by a Stranger. Remedy, for both: Damages; by Action on the Case.

9.

Disturbance, of TENURE, by driving away Tenants, is remedied by a special Action on the Case; for Damages.

10.

Disturbance, of PATRONAGE, is the Hindrance of a Patron to present his Clerk to a Benefice; whereof USURPATION, within six Months, is now become a Species.

11.

Disturbers may be, 1. The Pseudo-Patron, by his wrongful Presentation. 2. His Clerk, by demanding Institution. 3. The Ordinary, by refusing the Clerk of the true Patron.

12.

The Remedies are, 1. By Assise of *darrein Presentment*; 2. By Writ of *Quare impedit*; — to compel Institution and recover Damages: Consequent to which are the Writs of *Quare incumbravit*, and *Quare non admisit*; for subsequent Damages. 3. By Writ of Right of Advowson; to compel Institution, or establish the permanent Right.

CHAP. XI.

Of the PURSUIT of Remedies, by ACTION in the Courts of COMMON LAW; and, first, of PROCESS, PLEADING, DEMURRER, and ISSUE.

I.

THE PURSUIT of the several Remedies, furnished by the LAWS of ENGLAND, is, 1. By ACTION in the Courts of COMMON LAW. 2. By PROCEEDINGS in the Courts of EQUITY.

2.

Of an ACTION in the Court of COMMON PLEAS (the proper Court for prosecuting civil Suits) the orderly Parts are, ^{Original writ} 1. The PROCESS. 2. The PLEADINGS. 3. The DEMURRER, or ISSUE. 4. The TRIAL. 5. The JUDGMENT. 6. The APPEAL. 7. The EXECUTION.

3.

PROCESS^k is the Means of compelling the Defendant to appear in Court; and it includes, 1. The ORIGINAL Writ of *Praecipe*, or *Si fecerit te securum*; ^{Ap. N^o 3 S. 1.} with Summons, or Attachment, and Distress infinite. 2. The JUDICIAL Writs of *Capias ad respondendum*, and *Testatum Capias*: (Or, instead of these, in the King's Bench, the Bill of MIDDLESEX, and Writ of *Latitat*; — and, in the Exchequer, the Writ of *Quo minus*.) 3. The *alias*, and *pluries*, Writs.

^k See APPENDIX, No. IX. §. 1, 2, 3, 4, 5.

4. The

4. The Exigent and Outlawry. 5. The Arrest.
6. Bail; first to the Sheriff, and then to the Action.

Chap: 12

4.

PLEADINGS¹ are the mutual Altercations of the Plaintiff and Defendant in Writing; under which are comprized, 1. The Declaration. 2. The Imparlance, View, Oyer, Aid, or Voucher. 3. The Plea; which is either a DILATORY Plea, 1st, to the Jurisdiction; 2dly, in Disability of the Plaintiff; 3dly, in Abatement: Or, it is a Plea TO THE ACTION, usually denying the Complaint, by pleading, 1st, a special Bar; 2dly, the general Issue. 3. The Replication, Rejoinder, Surrejoinder, Rebutter, Surrebutter, &c.

5.

ISSUE is where the Parties, in a Course of Pleading, come to a Point affirmed on one Side, and denied on the other: Which, if it be a Matter of Law, is called a DEMURRER^m; if it be a Matter of Fact, still retains the Name of an ISSUEⁿ, of Fact.

¹ See APPENDIX, No. VIII. §. 4. No. IX. §. 6.
No. IX. §. 6. ⁿ See APPENDIX, No. VIII. §. 4.

^m See APPENDIX,

C H A P. XII.

Of the several Species of TRIAL.

1.

TRIAL is the Examination of the Point put in Issue, either by the original Pleadings, or in consequence of a Plea *puis darrein Continuance*.

2.

The Trial of an Issue of LAW, or Demurrer, is by the Opinion of the Judges of the Court.

3.

The Trial of an Issue of FACT is, 1. By the RECORD. 2. By INSPECTION. 3. By WITNESSES. 4. By WAGER of BATTEL. 6. By WAGER of LAW. 7. By JURY.

4.

Trial by the RECORD is had, when the Existence of such Record is the Point in Issue.

5.

Trial by INSPECTION is had by the Court, principally when the Matter in Issue is the evident Object of the Senses.

6.

Trial by WITNESSES (the regular Method in the civil Law) is only used on a Writ of Dower, when the Death of the Husband is in Issue.

7.

Trial by CERTIFICATE is had in those Cases, where such Certificate must have been conclusive to a Jury.

G

8. Trial

8.

Trial by WAGER of BATTEL, in civil Cases, is only had on a Writ of Right; but, in lieu thereof, the Tenant may have, at his Option, the Trial by the GRAND ASSISE.

9.

Trial by WAGER of LAW is only had, where the Matter in Issue may be supposed to have been privately transacted, between the Parties themselves, without the Intervention of other Witnesses.

CHAP. XIII.

Of the Trial by JURY.

I.

TRial by JURY is, 1. EXTRAORDINARY; as, by the grand Assise, in Writs of Right; and by the grand Jury, in Writs of Attaint. 2. ORDINARY.

2.

The Method and Process of the ORDINARY Trial by Jury^o is, 1. The Writ of *Venire facias* to the Sheriff, Coroners, or Elifors; with the subsequent compulsive Process of *Habeas Corpora*, or *Distingas*. 2. The Carrying down of the Record to the Court of *Nisi prius*. 3. The Sheriff's Return; or Panel of, 1st, special, 2dly, common Jurors. 4. The Challenges; 1st, to the Array; 2dly, to the Polls of

o See APPENDIX, No. VIII. §. 4.

the Jurors; either, *propter Honoris Respectum*, *propter Defectum*, *propter Affectum*, (which is either a principal Challenge, or to the Favour) or, *propter Delictum*. 5. The *Tales de circumstantibus*. 6. The Oath of the Jury. 7. The Evidence; which is either by Proofs, 1st, written; 2dly, parol; or, by the private Knowledge of the Jurors. 8. The Verdict; which may be, 1st, privy; 2dly, public; 3dly, special.

C H A P. XIV.

Of JUDGMENT, APPEAL, and EXECUTION.

I.

WHatever is transacted at the Trial, in the Court of *Nisi prius*, is added to the Record under the Name of a *POSTEA*: Consequent upon *N.º d. Sc. 4.* which is the JUDGMENT.

2.

JUDGMENT is the Sentence of Law, pronounced by the Court, upon the Matter contained in the Record.

3.

Judgment may be ARRESTED^p or stayed for Causes, 1. Extrinsic, or *dehors* the Record; 2. Intrinsic, or within it.

^p See APPENDIX, No. VIII. §. 4.

4.

Judgments are, 1. Interlocutory. 2. Final; which are either complete at first, or incomplete till perfected by a Writ of Enquiry.

5.

COSTS, or Expenses of Suit, are now the necessary Consequence of obtaining Judgment.

6.

Proceedings, in the Nature of APPEALS from Judgment, are. 1. A Writ of ATTAINT; to impeach the Verdict of a Jury; which of late has been superseded by new Trials. 2. A Writ of *Audita Querela*; to discharge a Judgment by Matter that has since happened. 3. A Writ of ERROR^q, from one Court of Record to another; to correct Judgments, erroneous in point of Law, and not helped by the Statutes of Amendment and Jeofails.

7.

EXECUTION is the Putting in Force of the Sentence or Judgment of the Law: Which is effected, 1. Where Possession of the Thing itself is recovered; by Writ of *Habere facias Seisinam, Possessionem, &c.* 2. Where Money only is recovered; by Writ of, 1st, *Capias ad Satisfaciendum*^r, against the BODY of the Defendant; or, in default thereof, *Scire facias* against his Bail. 2dly, *Fieri facias*^s, against his GOODS and Chattels. 3dly, *Levari facias*, against his GOODS, and the PROFITS of his LANDS. 4thly,

^q See APPENDIX, No. IX. §. 6.

^r See APPENDIX, No. IX. §. 7.

^s See APPENDIX, No. IX. §. 7.

Elegit,

Elegit, against his GOODS, and the POSSESSION of his LANDS. 5thly, Extent, and other Procefs, on Statutes, Recognizances, &c, against his BODY, LANDS, and GOODS.

CHAP. XV.

Of Proceedings in the Courts of EQUITY.

I.

EQUITY, being the Correction of that wherein the Law (by reason of it's Univerfality) is deficient, should not therefore interfere where Relief may be had by the ordinary Courfe of Law.

2.

Aequitas fequitur Legem; and therefore Equity should never weaken the fundamental Rules of Property, eftablifhed by the common Law.

3.

Suits in Equity, from the Variety of Circumftances therein confidered, muft neceffarily be of longer Duration than Suits at the common Law.

4.

The Bufinefs of Equity is almoft infinite; but is chiefly to give Relief in Matters of FRAUD, ACCIDENT, and TRUST; *fecundum Confcientiam, & Arbitrium boni Viri.*

5.

The Proceedings in the Court of Chancery, (to which thofe in the Exchequer very nearly conform) are,

are, 1. Bill. 2. Writ of *Subpoena*; and, perhaps, Injunction. 3. Process of Contempt; viz. (ordinarily) Attachment, Attachment with Proclamations, Commission of Rebellion, Serjeant at Arms, and Sequestration. 4. Appearance. 5. Demurrer. 6. Plea. 7. Answer. 8. Exceptions; Amendments; cross, or supplemental, Bills; Bills of Revivor, Interpleader, &c. 9. Replication. 10. Issue. 11. Depositions, taken upon Interrogatories; and subsequent Publication thereof. 12. Hearing. 13. Interlocutory Decree; feigned Issue, and Trial; Reference to the Master, and Report; &c. 14. Final Decree. 15. Rehearing, or Bill of Review. 16. Appeal to Parliament.



*The Lectures of this Book ended the
24th of May - 1759.*

Book

Lectures, begun the 12, of June 1759.

BOOK THE FOURTH.

Of PUBLIC WRONGS, or CRIMES and MISDEMESNORS.

CHAPTER I.

Of the NATURE of CRIMES, and PUNISHMENTS.

I.

IN treating of PUBLIC WRONGS may be considered, 1. The general NATURE of Crimes, and Punishments. 2. The Persons CAPABLE of committing them, and their several DEGREES of Guilt. 3. The several SPECIES of Crimes, and their respective Punishments. 4. The Means of PREVENTION. 5. The Method of PUNISHMENT.

2.

A CRIME, or MISDEMESNOR, is an Act committed, or omitted, in Violation of a public Law, either forbidding or commanding it.

3.

Crimes are distinguished from civil Injuries, in that they are a Breach and Violation of the PUBLIC Rights, due to the whole Community, considered as a Community.

4. PUNISH-

4.

PUNISHMENTS may be considered with regard to,
1. The POWER; 2. The END; 3. The MEASURE; — of their Infliction.

5.

The POWER, or Right, of inflicting human Punishments, for NATURAL Crimes, or such as are *Mala in se*, was by the Law of Nature vested in every Individual; but, by the fundamental Contract of Society, is now transferred to the sovereign Power: In which also is vested, by the same Contract, the Right of punishing POSITIVE Offences, or such as are *Mala prohibita*.

6.

The END of human Punishments is to prevent future Offences; 1. By amending the Offender himself. 2. By deterring others through his Example. 3. By depriving him of the Power to do future Mischief.

7.

The MEASURE of human Punishments must be determined by the Wisdom of the sovereign Power, and not by any uniform universal Rule: Though that Wisdom may be regulated, and assisted, by certain general, equitable, Principles.

C H A P. II.

*Of the Persons CAPABLE of committing Crimes,
and their several DEGREES of Guilt.*

I.

ALL Persons are CAPABLE of committing Crimes, unless there be in them a DEFECT of WILL: For, to constitute a legal Crime, there must be both a vitious Will, and a vitious Act.

2.

The Will does not concur with the Act, 1. Where there is a Defect of UNDERSTANDING. 2. Where no Will is EXERTED. 3. Where the Act is CONSTRAINED by Force and Violence.

3.

A vitious Will may therefore be wanting, in the Cases of, 1. Infancy. 2. Ideocy, or Lunacy. 3. Drunkenness; which doth not, however, excuse. 4. Misfortune, or Chancemedley. 5. Ignorance, or Mistake of Fact. 6. Compulsion, or Necessity; which is, 1st, that of civil Subjection; 2dly, that of Duress *per Minas*; 3dly, that of choosing the least pernicious of two Evils, where one is unavoidable; 4thly, that of Want, or Hunger; which is no legitimate Excuse.

4.

The King, from his Excellence and Dignity, is also incapable of doing Wrong.

5. The

5.

The different DEGREES of Guilt in Criminals are, 1. AS PRINCIPALS. 2. AS ACCESSORIES.

6.

A PRINCIPAL in a Crime is, 1. He who commits the Fact. 2. He who is present at, aiding, and abetting, the Commission.

7.

An ACCESSORY is he who doth not commit the Fact, nor is present at the Commission; but is in some sort concerned therein, either BEFORE OR AFTER.

8.

Accessories can only be in petit Treason, and Felony: In high Treason, and Misdemeanors, all are Principals.

9.

An Accessory, BEFORE the Fact, is one who, being absent when the Crime is committed, hath procured, counselled, or commanded another to commit it.

10.

An Accessory, AFTER the Fact, is where a Person, knowing a Felony to have been committed, receives, relieves, comforts, or assists the Felon. Such Accessory is usually entitled to the Benefit of Clergy; where the Principal, and Accessory BEFORE the Fact, are excluded from it.

C H A P. III.

*Of Offences against the DIVINE Law, and the
Law of NATIONS.*

CRimes and Misdemeanors, cognizable by the
Laws of ENGLAND, are such as more im-
mediately offend, 1. The DIVINE Law. 2. The
Law of NATIONS. 3. The MUNICIPAL Law.

Crimes, more immediately offending the DIVINE
Law, are, 1. APOSTACY. For which the Penalty
is Incapacity, and Imprisonment. 2. HERESY.
Penalty, for one Species thereof: The same. 3. Of-
fences against the established CHURCH: — Either, by
REVILING it's Ordinances. Penalties: Fine; De-
privation; Imprisonment; Forfeiture. — Or, by
NONCONFORMITY to it's Worship: 1st, Through
total IRRELIGION. Penalty: Fine. 2dly, Through
protestant DISSENTING. Penalty: Suspended by
the Toleration Act. 3dly, Through POKERY, ei-
ther in Professors of the popish Religion, popish
Recusants convict, or popish Priests. Penalties:
Incapacity; double Taxes; Imprisonment; Fines;
Forfeitures; Abjuration of the Realm; Judg-
ment of Felony, without Clergy; and of high
Treason. 4. BLASPHEMY. Penalty: Fine, Impri-
sonment, and corporal Punishment. 5. Profane
SWEARING

SWEARING and CURSING. Penalty: Fine, or House of Correction. 6. **WITCHCRAFT**; or, at least, the Pretence thereto. Penalty: Imprisonment, and Pillory. 7. **Religious IMPOSTURES.** Penalty: Fine, Imprisonment, and corporal Punishment. 8. **SABBATH-BREAKING.** Penalty: Fine. 9. **DRUNKENNESS.** Penalty: Fine, or Stocks. 10. **LEWDNESS.** Penalties: Fine; Imprisonment; House of Correction.

3.

Crimes against the Law of NATIONS, animadverted on by the **Laws of ENGLAND**, are, 1. Violation of **SAFE-CONDUCTS**. 2. Infringement of the Rights of **EMBASSADORS**. Penalty, in both: Arbitrary. 3. **PIRACY.** Penalty: Judgment of Felony, without Clergy.

C H A P. IV.

Of Offences more especially against the KING, and his Government; and, first of HIGH TREASON.

1.

CRimes, and Misdemeanors, more peculiarly offending the MUNICIPAL Law, are those which especially affect, 1. The KING, and his Government. 2. The COMMONWEALTH. 3. INDIVIDUALS.

2.

Offences, especially affecting the KING, and his Government, are, 1. HIGH TREASON. 2. FELONIES injurious to the Prerogative. 3. PRAEMUNIRE. 4. Other MISPRISIONS and CONTEMPTS.

3.

HIGH TREASON, according to the Statute of EDWARD III. may be committed, 1. By COMPASSING or IMAGINING the DEATH of the King, or Queen-confort, or their eldest Son and Heir; demonstrated by some overt Act. 2. By VIOLATING the Queen-confort, the King's eldest Daughter, or the Wife of his eldest Son. 3. By some overt Act of LEVYING WAR against the King in his Realm. 4. By ADHERENCE to the King's Enemies. 5. By COUNTERFEITING the King's great or privy SEAL. 6. By COUNTERFEITING the King's MONEY, or Importing counterfeit Money. 7. By KILLING the Chancellor, Treasurer, or King's Justices, in the Execution of their Offices.

4. HIGH

4.

HIGH TREASONS, created by subsequent Statutes, are such as relate, 1. To PAPISTS: As, the repeated Defence of the Pope's Jurisdiction; the Coming from beyond Sea of a natural born popish Priest; the Renouncing of Allegiance, and Reconciliation to the Pope, or other foreign Power. 2. To the COINAGE, or other Signatures of the King: As, Counterfeiting (or, Importing and Uttering counterfeit) foreign Coin, here current; Forging the Sign manual, privy Signet, or privy Seal; Falsifying, &c, the current Coin. 3. To the PROTESTANT SUCCESSION: As, Corresponding with, or Remitting Money to, the Pretender or his Sons; Endeavouring to impede the Succession; Writing or Printing, in Defence of the Pretender's Title, or in Derogation of the Act of Settlement, or of the Power of Parliament to limit the Descent of the Crown.

5.

The PUNISHMENT of high Treason, in MALES, is (generally) to be, 1. Drawn. 2. Hanged. 3. Embowelled alive. 4. Beheaded. 5. Quartered. 6. The Head and Quarters to be at the King's Disposal. But, in Treasons relating to the Coin, only to be drawn, and hanged till dead. FEMALES, in both Cases, are to be drawn, and burned alive.

CHAP. V.

Of other Crimes, affecting the KING and Government.

I.

FELONY is that Offence, which occasions the total Forfeiture of Lands or Goods at common Law; now usually also punishable with Death, by Hanging; unless through the Benefit of Clergy.

2.

FELONIES, injurious to the King's Prerogative, (of which some are within, others without, Clergy) are,

1. Such as relate to the **CORN**: As, the wilful Uttering of counterfeit Money, &c; (to which Head certain other Misdemeanors may be also referred.)
2. Conspiring or Attempting to kill a **PRIVY COUNSELLOR**.
3. Serving **FOREIGN** States, or Enlisting Soldiers for **FOREIGN** Service.
4. Embezzling the King's **ARMOUR** or **STORES**.

3.

PRAEMUNIRE, in it's original Sense, is the Offence of Adhering to the temporal Power of the Pope, in Derogation of the regal Authority. Penalty: Outlawry, Forfeiture, and Imprisonment: Which hath since been extended to some Offences of a different Nature.

4. Other

4.

Other MISPRISIONS and CONTEMPTS are, 1. NEGATIVE; viz. 1st, MISPRISION of TREASON. Penalty: Forfeiture and Imprisonment. 2dly, MISPRISION of FELONY. Penalty: Fine and Imprisonment. 3dly, CONCEALMENT of TREASURE TROVE. Penalty: Fine and Imprisonment. 2. POSITIVE; viz. 1st, MAL-ADMINISTRATION of public Trusts. Usual Penalties: Banishment; Fines; Imprisonment; Disability. 2dly, Contempts against the King's PREROGATIVE. Penalty: Fine, and Imprisonment. 3dly, Contempts against his PERSON, and GOVERNMENT. Penalty: Fine, Imprisonment, and infamous corporal Punishment. 4thly, Contempts against his TITLE. Penalties: Fine, and Imprisonment; or, Fine, and Disability. 5thly, Contempts against his PALACES, or COURTS of Justice. Penalties: Fine; Imprisonment; corporal Punishment; Loss of right Hand; Forfeiture.

CHAP. VI.

Of Offences against the COMMONWEALTH; and, first, against the public JUSTICE, and the public PEACE.

I.

CRimes, especially affecting the COMMONWEALTH, are Offences, 1. Against the public JUSTICE. 2. Against the public PEACE. 3. Against the public TRADE. 4. Against the public HEALTH. 5. Against the public OECONOMY.

2.

Offences against the public JUSTICE are, 1. VACATING Records, and PERSONATING others in Courts of Justice. Penalty: Judgment of Felony, usually without Clergy. 2. COMPELLING Prisoners to become APPROVERS. Penalty: Judgment of Felony. 3. OBSTRUCTING the Execution of Proceſs. 4. ESCAPES. 5. BREACH of Priſon. 6. RESCUE.— Which four may be either Felonies; or Miſdemefnors, puniſhable by Fine and Imprifonment. 7. RETURNING from TRANSPORTATION. This is Felony, without Clergy. 8. Taking REWARDS, to HELP one to his ſtolen Goods. Penalty: The ſame as the Theft. 9. RECEIVING ſtolen Goods. Penalties: Transportation; Fine; and Imprifonment. 10. THEFTBOTE. 11. BARRETRY, and Suing in a feigned Name. 12. MAINTENANCE. 13. CHAMPERTY. — Penalty, in theſe four: Fine, and Imprifonment.

prisonment. 14. COMPOUNDING Prosecutions on penal Statutes. Penalty: Fine, Pillory, and Disability. 15. CONSPIRACY. Penalty: The villenous Judgment. 16. PERJURY, and Subornation thereof. Penalties: Infamy; Imprisonment; Fine, or Pillory; and, sometimes, Transportation, or Bridewell. 17. BRIBERY. Penalty: Fine, and Imprisonment. 18. EMBRACERY. Penalty: Infamy, Fine, and Imprisonment. 19. FALSE VERDICT. Penalty: The Judgment in Attaint. 20. NEGLIGENCE of public Officers, &c. Penalty: Fine, and Forfeiture of the Office. 21. OPPRESSION of Magistrates. 22. EXTORTION of Officers. — Penalty, in both: Imprisonment, Fine, and, sometimes, Forfeiture of the Office.

3.

Offences, against the public PEACE, are, 1. RIOTOUS ASSEMBLIES to the Number of TWELVE. 2. Appearing armed, or Hunting, in DISGUISE. 3. THREATENING by Letters. — All these are Felonies, without Clergy. 4. Destroying of TURNPIKES, &c. Penalties: Whipping; Imprisonment; Judgment of Felony, with and without Clergy. 5. AFFRAYS. 6. RIOTS, ROUTS, and UNLAWFUL ASSEMBLIES. 7. Tumultuous PETITIONING. 8. Forcible ENTRY and DETAINER. — Penalty, in all four: Fine, and Imprisonment. 9. Going unusually ARMED. Penalty: Forfeiture of Arms, and Imprisonment. 10. Spreading FALSE NEWS. Penalty: Fine, and Imprisonment. 11. Pretended PROPHECIES. Penalties: Fine; Imprisonment; and Forfeiture.

12. CHAL-

12. CHALLENGES. Penalty: Fine, Imprisonment, and, sometimes, Forfeiture. 13. LIBELS. Penalty: Fine, and corporal Punishment.

CHAP. VII.

Of the remaining Offences against the COMMON-WEALTH.

I.
Offences, against the public TRADE, are,
 1. OWLING. Penalties: Fines; Forfeiture; Imprisonment; Loss of left Hand; Transportation; Judgment of Felony. 2. SMUGGLING. Penalties: Fines; Loss of Goods; Judgment of Felony, without Clergy. 3. FRAUDULENT BANKRUPTCY. Penalty: Judgment of Felony, without Clergy. 4. USURY. Penalty: Fine, and Imprisonment. 5. CHEATING. Penalties: Fine; Imprisonment; Pillory; Tumbrel; or other corporal Punishment. 6. FORESTALLING. 7. REGRATING. 8. ENGROSSING. — Penalties, for all three: Loss of Goods; Fine; Imprisonment; Pillory. 9. MONOPOLIES, and COMBINATIONS to raise the Price of Commodities. Penalties: Fines; Imprisonment; Pillory; Loss of Ear; Infamy; and, sometimes, the Pains of *Praemunire*. 10. Exercising a TRADE, not having served as Apprentice. Penalty: Fine. 11. Transporting, or Residing abroad, of ARTIFICERS. Penalties: Fine; Imprisonment; Forfeiture; Incapacity; Becoming Aliens.

2.

Offences, against the public HEALTH, are,
 1. IRREGULARITY, in time of the PLAGUE, or of
 QUARENTINE. Penalties: Whipping; Judgment
 of Felony, with and without Clergy. 2. Selling
 UNWHOLSOME PROVISIONS. Penalties: Amerce-
 ment; Pillory; Fine; Imprisonment; Abjuration.

3.

Offences against the public OECONOMY, or do-
 mestic Order of the Kingdom, are, 1. Those rela-
 ting to CLANDESTINE and IRREGULAR MARRI-
 AGES. Penalties: Judgment of Felony, with and
 without Clergy. 2. BIGAMY, or (more properly)
 POLYGAMY. Penalty: Judgment of Felony.
 3. WANDERING by SOLDIERS, or MARINERS.
 4. Remaining in ENGLAND by EGYPTIANS. Both
 these are Felonies, without Clergy. 5. IDLENESS,
 DISORDER, VAGRANCY, and INCORRIGIBLE RO-
 GUERY. Penalties: Imprisonment; Whipping;
 Judgment of Felony. 6. COMMON NUSANCES,
 1st, in Highways, &c; 2dly, by offensive Trades;
 3dly, by disorderly Houses; 4thly, by Cottages;
 5thly, by Fireworks; 6thly, by Evefdropping; —
 Penalty, in all: Fine. — 7thly, by common Scold-
 ing. Penalty: the cucking Stool. 7. LUXURY,
 in Diet. Penalty: Uncertain. 8. GAMING. Pe-
 nalties: To Gentlemen, Fines; to others, Fine
 and Imprisonment; to cheating Gamesters, Fine,
 Infamy, and the corporal Pains of Perjury. 9. DE-
 STROYING the GAME. Penalties: Fines; and cor-
 poral Punishment.

C H A P. VIII.

*Of Crimes against INDIVIDUALS ; and, first,
of HOMICIDE.*

I.

CRimes, especially affecting INDIVIDUALS, are,
1. Against their PERSONS. 2. Against their
HABITATIONS. 3. Against their PROPERTY.

2.

Crimes against the PERSONS of Individuals, are,
1. By HOMICIDE, or Destroying Life. 2. By o-
ther CORPORAL Injuries.

3.

HOMICIDE is, 1. JUSTIFIABLE. 2. EXCUSA-
BLE. 3. CRIMINAL.

4.

Homicide is JUSTIFIABLE, 1. By Necessity, and
Command of Law. 2. By Permission of Law, for
the Furtherance of public Justice. 3. By like Per-
mission, for Prevention of some forcible Felony.

5.

Homicide is EXCUSABLE, 1. *Per Infortunium*, or
by Chancemedley. 2. *Se defendendo*, or in Self-De-
fence. Penalty, in both: Forfeiture of Goods,
which however is pardoned of course.

6.

CRIMINAL Homicide is the Killing of a human
Creature without Justification or Excuse. This is,
1. Killing ONE'S SELF. 2. Killing ANOTHER.

7. Killing

7.

Killing ONE'S SELF, or SELF-MURDER, is where one deliberately, or by any unlawful malicious Act, puts an End to his own Life. This is Felony; punished by ignominious Burial, and Forfeiture of Goods and Chattels.

8.

Killing ANOTHER is, 1. MANSLAUGHTER.
2. MURDER.

9.

MANSLAUGHTER is the unlawful Killing of another; without Malice, exprefs or implied. This is Felony, but within Clergy; except in the Case of STABBING.

10.

MURDER is when a Person, of sound Memory and Discretion, unlawfully killeth any reasonable Creature, in Being, and under the King's Peace; with Malice aforethought, either exprefs or implied. This is Felony, without Clergy; punished with speedy Death, and Hanging in Chains, or Dissection.

11.

PETIT TREASON (being an aggravated Degree of Murder) is where the Servant kills his Master, the Wife her Husband, or the Ecclesiastic his Superior. Penalty: In Men, to be drawn, and hanged; in Women, to be drawn, and burned.

CHAP.

CHAP. IX.

*Of other Crimes, affecting the PERSON of
Individuals.*

I.

CRimes affecting the PERSON of Individuals, not amounting to Homicide, are, 1. MAYHEM; and also SHOOTING at another. Penalties: Fine; Imprisonment; Judgment of Felony, without Clergy. 2. Forcible ABDUCTION, and MARRIAGE or DEFILEMENT, of an Heiress; which is Felony: Also, STEALING, and DEFLOWERING, or MARRYING any Woman-Child under the Age of SIXTEEN Years; for which the Penalty is Imprisonment, Fine, and temporary Forfeiture of her Lands. 3. RAPE; and also DEFLOWERING a Woman-Child under the Age of TEN Years. 4. BUGGERY, with Man or Beast. — Both these are Felony, without Clergy. 5. ASSAULT. 6. BATTERY; especially of Clergymen. 7. WOUNDING. 8. KIDNAPPING, or, forcibly Stealing away the King's Subjects. Penalties, in all four: Fine; Imprisonment; and other corporal Punishment.

CHAP. X.

*Of Crimes affecting the HABITATION, and
PROPERTY, of Individuals.*

1.

Crimes, affecting the HABITATION of Individuals are, 1. ARSON. 2. BURGLARY.

2.

ARSON is the malicious and wilful Burning of the House, Outhouses, &c, of another Man. This is Felony; in some Cases within, in others without, Clergy.

3.

BURGLARY is the Breaking and Entering, by Night, into a Mansion-House; with Intent to commit a Felony. This is Felony, without Clergy.

4.

Crimes, affecting the PROPERTY of Individuals, are, 1. LARCINY. 2. Malicious MISCHIEF. 3. FORGERY.

5.

LARCINY is, 1. SIMPLE. 2. MIXED, or COMPOUND.

6.

SIMPLE Larciny is the felonious Taking, and Carrying away, of the personal Goods of another. And it is, 1. GRAND Larciny; being above the Value of twelve Pence. Which is Felony; in some Cases within, in others without, Clergy. 2. PETIT Lar-

Larciny, to the Value of twelve Pence only. Which is also Felony, but not capital; being punished with Whipping, or Transportation.

7.

MIXED, or COMPOUND, Larciny is that wherein the Taking is accompanied with the Aggravation of being, 1. From the HOUSE. 2. From the PERSON.

8.

Larcinies from the HOUSE, by Day or Night, are Felonies without Clergy, when they are, 1. Larcinies, above twelve Pence, from a Church; or from a Dwelling-House, or Booth, any Person being therein. 2. Larcinies, of five Shillings, by Breaking the House; though no Person be therein. 3. Larcinies, of forty Shillings, from the House; without Breaking, and though no Person be therein. 4. Larcinies, of five Shillings, from a Shop, &c; whether broken or not, and though no Person be therein.

9.

Larciny from the PERSON is, 1. By PRIVATELY STEALING, from the Person of another, above the Value of twelve Pence. 2. By ROBBERY; or, the felonious and forcible Taking, from the Person of another, in or near the Highway, Goods or Money of any Value, by Putting him in Fear. These are, both, Felonies without Clergy. An Attempt to rob is also Felony.

10.

Malicious MISCHIEF, by Destroying Dikes, Goods, Cattel, Ships, Garments, Fishponds, Trees,
Sea

Sea or River Banks, Hopbinds, or Coalmines, is Felony; and, in most Cases, without Clergy.

II.

FORGERY is the fraudulent Making or Alteration of a Writing, in Prejudice of another's Right. Penalties: Fine; Imprisonment; Loss of Nose and Ears; Forfeiture; Judgment of Felony, without Clergy.

CHAP. XI.

Of the Means of PREVENTION, and the COURTS instituted for the PUNISHMENT, of Crimes and Misdemeanors.

I.

CRimes and Misdemeanors may be PREVENTED, by Compelling suspected Persons to give SECURITY: Which is effected by binding them in a conditional Recognizance to the King, taken in Court, or by a Magistrate.

2.

These Recognizances may be conditioned, 1. To keep the PEACE. 2. To be of the GOOD BEHAVIOUR.

3.

In the Method of PUNISHMENT may be considered, 1. The several COURTS of criminal Jurisdiction. 2. The several PROCEEDINGS therein.

4. The

4.

The criminal COURTS are, 1. Those of a PUBLIC and general Jurisdiction throughout the Realm. 2. Those of a PRIVATE and special Jurisdiction.

5.

PUBLIC Courts are, 1. The high Court of Parliament; which proceeds by Impeachment. 2. The Court of the Lord high Steward. 3. The Court of King's Bench. 4. The Court of Chivalry. 5. The Court of Admiralty, under the King's Commission. 6. The Courts of Oyer and Terminer, and general Goal-delivery. 7. The Court of Quarter-Sessions. 8. The Sheriff's Tourn. 9. The Court Leet. 10. The Court of the Coroner. 11. The Court of the Clerk of the Market. *App. P. 77. No. 10.*

6.

PRIVATE Courts are, 1. The Court of the Lord Steward, &c. by Statute of HENRY VII. 2. The Court of the Lord Steward, &c. by Statute of HENRY VIII. 3. The University Courts.

CHAP. XII.

*Of SUMMARY Convictions, and the first Stages of
REGULAR Prosecutions.*

I.

PROCEEDINGS in criminal Courts are, 1. SUMMARY. 2. REGULAR.

2.

SUMMARY Proceedings are such, whereby a Man may be convicted of divers Offences, without any formal Process or Jury, at the Discretion of the Judge or Judges appointed by Act of Parliament.

3.

REGULAR Proceedings, in the Courts of common Law, are, 1. ARREST. 2. COMMITMENT and BAIL. 3. PROSECUTION. 4. PROCESS. 5. ARRAIGNMENT, and it's Incidents. 6. PLEA and ISSUE. 7. TRIAL and CONVICTION. 8. CLERGY. 9. JUDGMENT, and it's Consequences. 10. AVOIDER of Judgment. 11. EXECUTION.

4.

An ARREST is the Apprehending, or Restraining, of one's Person; in order to be forthcoming to answer a Crime, with which one is charged or suspected.

5.

This may be done, 1. By Warrant. 2. By an Officer, without Warrant. 3. By a private Person, without Warrant. 4. By an Hue and Cry.

6. COM-

6.

COMMITMENT is the Confinement of one's Person in Prison, for safe Custody; by Warrant from proper Authority; unless, in bailable Offences, he puts in sufficient BAIL, or Security for his future Appearance.

7.

PROSECUTION, or the Manner of accusing Offenders, is either by a previous Finding of a grand Jury, as, 1. By PRESENTMENT. 2. By INDICTMENT. Or, without such Finding, 3. By INFORMATION. 4. By APPEAL.

8.

A PRESENTMENT is the Notice taken by a grand Jury of any Offence, from their own Knowledge or Observation.

9.

AN INDICTMENT^t is a written Accusation of one or more Persons for a Crime or Misdemeanor, preferred to, and presented on Oath by, a grand Jury; expressing, with sufficient Certainty, the Person, Time, Place, and Offence.

10.

AN INFORMATION is, 1. At the Suit of the King and a Subject, upon penal Statutes. 2. At the Suit of the King only. Both differing from Indictments principally in this; that they are exhibited by the Informer, or the King's Officer; and not on the Oath of a grand Jury.

^t See APPENDIX, No. X. §. 1.

II.

An APPEAL is an Accusation, brought by one private Subject against another, of Larciny, Rape, Mayhem, Arson, or Homicide; which the King cannot discharge or pardon.

CHAP. XIII.

Of PROCESS, ARRAIGNMENT, PLEA, and ISSUE.

I.

PROCESS to bring in an Offender, when indicted in his Absence, is, in Misdemeanors, by *Venire facias*, Distress infinite, and *Capias*; in capital Crimes, by *Capias*^u only; and, in both, by Outlawry.

2.

ARRAIGNMENT^w is the Calling of the Prisoner to the Bar of the Court, to answer the Matter of the Indictment.

3.

Incident hereunto are, 1. The standing mute of the Prisoner; for which, in petit Treason, and Felonies of Death, he shall undergo the *Peine fort and dure*. 2. His Confession; which is either SIMPLE; or by way of APPROVEMENT.

4.

The PLEA, or defensive Matter alleged by the Prisoner, is, 1. A Plea to the Jurisdiction. 2. A

^{u w} See APPENDIX, No. X. §. I.

Demurrer in point of Law. 3. A Plea in Abatement. 4. A special Plea in Bar; which is, 1st, *Auterfoits acquit*; 2dly, *Auterfoits convict*; 3dly, *Auterfoits attaint*; 4thly, a Pardon. 5. The general Issue, Not guilty^x.

5.

Hereupon ISSUE is joined by the Clerk of the Arraignment, on Behalf of the King.

CHAP. XIV.

Of TRIAL, CONVICTION, and CLERGY.

1.

TRIALS of Offences, by the LAWS of ENGLAND, were and are, 1. By the CORONER. 2. By ORDEAL, of either Fire, or Water. Both which have been long abolished. 3. By BATTLE, in Appeals and Approvements. 4. By the PEERS of GREAT-BRITAIN. 5. By JURY.

2.

The Method and Process of Trial by JURY is, 1. The Impanelling of the Jury. 2. Challenges; 1st, for Cause; 2dly, peremptory. 3. *Tales de circumstantibus*. 4. The Oath of the Jury. 5. The Evidence. 6. The Verdict, either general, or special.

^x See APPENDIX, No. X. §. 1.

3.

CONVICTION^y is when the Prisoner pleads, or is found, guilty: Whereupon, in Felonies, the Prosecutor is entitled to, 1. His Expenses. 2. Restitution of his Goods.

4.

CLERGY^z, or the Benefit thereof, is derived from the usurped Jurisdiction of the popish Ecclesiastics; but hath since been new modelled by several Statutes.

5.

It is an Exemption of the Clergy from any other secular Punishment for Felony, than Imprisonment for a Year, at the Court's Discretion; and it is extended likewise, absolutely, to lay Peers, for the first Offence; and to all lay Commoners, for the first Offence also, upon Condition of Branding, Imprisonment, or Transportation.

6.

Divers Felonies are ousted of Clergy by particular Statutes.

7.

Felons, on receiving the Benefit of Clergy, (though they forfeit their Goods to the Crown) are discharged of all clergyable Felonies before committed, and restored in all Capacities and Credits.

^y See APPENDIX, No. X. §. 1.

^z See APPENDIX, No. X. §. 2.

CHAP. XV.

Of JUDGMENT, AVOIDER *thereof*, and
EXECUTION.

1.

JUDGMENT^a (unless any Matter be offered in Arrest thereof) follows upon Conviction; being the Pronouncing of that Punishment which is expressly ordained by Law.

2.

ATTAINER of a Criminal is the immediate Consequence, 1. Of having Judgment of Death pronounced upon him. 2. Of Outlawry for a capital Offence.

3.

The Consequences of Attainder are, 1. FORFEITURE to the King. 2. CORRUPTION of BLOOD.

4.

FORFEITURE to the King is, 1. Of real Estates, upon Attainder; — in high Treason, absolutely, till the Death of the Pretender, and his Sons; — in Felonies, for the King's Year, Day, and Waste. 2. Of personal Estates, upon Conviction; in all Treason, Misprision of Treason, Felony, excusable Homicide, Standing mute upon Arraignment, atrocious Contempts of the King's Courts, and Flight.

^a See APPENDIX, No. X. §. 1.

5.

CORRUPTION of BLOOD is an utter Extinction of all inheritable Quality therein: So that, after the King's Forfeiture is first satisfied, the Criminal's Lands escheat to the Lord of the Fee; and he can never afterwards inherit, be inherited, or have any Inheritance derived through him.

6.

Judgments, and their Consequences, may be AVOIDED, 1. By FALSIFYING, or REVERSING, the Attainder. 2. By REPRIEVE, or PARDON.

7.

Attainders may be FALSIFIED, or REVERSED, 1. Without a Writ of Error, either for Faults in the Record, or for Matter *dehors* the Record. 2. By Writ of Error; for Mistakes in the Judgment. 3. By Act of Parliament; for Favour.

8.

A REPRIEVE is a temporary Suspension of the Judgment, 1. *Ex Arbitrio Judicis*. 2. *Ex Necessitate Legis*; for Pregnancy, Insanity, or the Trial of Identity of Person.

9.

A PARDON is a permanent Avider of the Judgment by the King's Majesty, in Offences against his Crown and Dignity; drawn in due Form of Law, allowed in open Court, and thereby making the Offender a new Man.

10.

EXECUTION is the Completion of human Punishment, and must be strictly performed in the Manner which the Law directs.

T H E . E N D .

Cap. 16.

*Of the rise & Progress of the Laws
of England. Vide Notes V. 4. P. 70.*



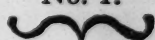


APPENDIX.

No. I.

Explanation of the TABLE of CONSANGUINITY.

FOR the better understanding of the annexed TABLE of CONSANGUINITY, it may be proper to observe, that CONSANGUINITY is twofold; LINEAL, and COLLATERAL.

No. I.


IN LINEAL CONSANGUINITY every Generation makes a different Degree; as is sufficiently obvious upon mere Inspection of the TABLE. And this, being the only natural Way of reckoning the Degrees in the direct Line, obtains universally in the civil, canon, and common Laws.

WITH regard to COLLATERAL CONSANGUINITY, there are two Ways of reckoning the Degrees of it. The Civilians ^a, in order to settle the Degree of Kindred between two Persons, count UPWARDS from either of them to the common Stock or Ancestor, from whom both are descended; and then DOWNWARDS again to the other; reckoning a Degree for each Person, both ascending and descending. The canon ^b Law, with which the common ^b DECRETAL. 4. Law of ENGLAND ^c agrees, begins from the common ^c 14. 3. & 9. Ancestor, and reckons only DOWNWARDS; and in what ^c CO. LITT. 236. Degree the two Persons, or the most remote of them, are distant from the common Ancestor, that is the Degree in which they are distant from one another.

IN

No. I.

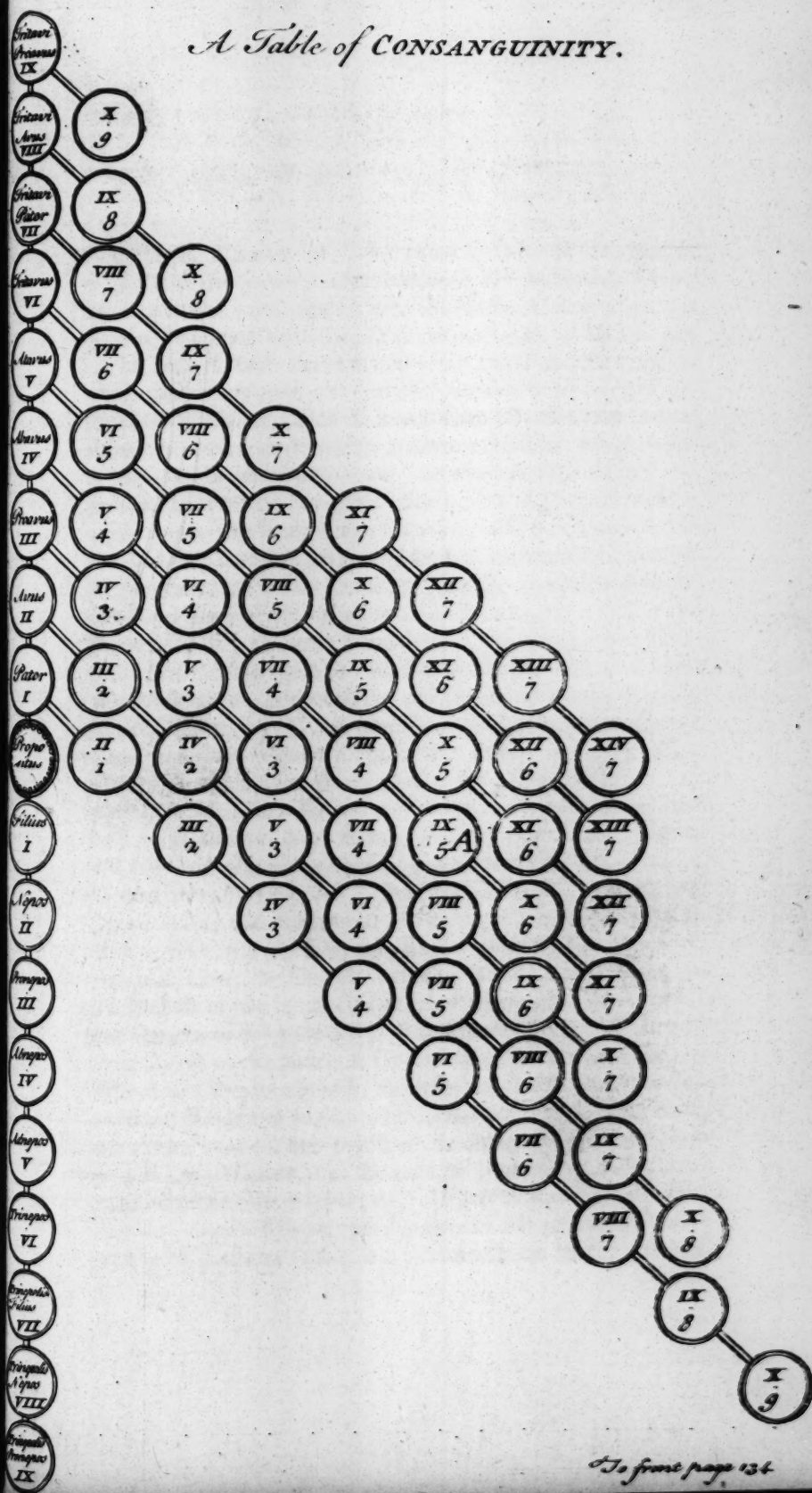
IN this TABLE (which is no other than the *Arbor Consanguinitatis* usually printed with the Bodies of civil and canon Law) all the collateral Degrees are expressed, to the TENTH of the Civilians, and the SEVENTH of the Canonists, inclusive, the former being distinguished by the Roman Numerals, the latter by the common Figures.

IF, for instance, it be enquired, in what Degree the Person marked A is related to the PROPOSITUS, by the civil Computation; we must count from the PROPOSITUS, upwards, to the *Abavus*, FOUR; then, downwards, from the *Abavus* to A, the Person enquired after, FIVE more; in the Whole, NINE: So that he is related to the PROPOSITUS in the NINTH Degree, by the civil Law.

ACCORDING to the Canonists and our common Lawyers, we must begin counting downwards, from the *Abavus* to the PROPOSITUS, FOUR; then again, from the *Abavus* to A, FIVE: Which being the greater Number of the two, the FIFTH is therefore the Degree in which, by this Computation, A and the PROPOSITUS are of Kin to each other.

No. II.

A Table of CONSANGUINITY.





No. II.

Explanation of the TABLE of DESCENTS.

THE TABLE of DESCENTS is intended to exhibit, to the Eye of the Student, the successive Order, in which he must search for the Heir of a Person, (as JOHN STILES,) who dies seised of an Estate in Fee simple. IF such Estate came to him by his own Acquisition, or PURCHASE, and not by Descent from any of his Ancestors; then in the first place succeeds the eldest Son, *Matthew Stiles*, or his Issue: (No. 1.) If his Line be extinct, then *Gilbert Stiles* and the other Sons, respectively, in Order of Birth, or their Issue: (No. 2.) In Default of these, ALL the Daughters together, *Margaret and Charlotte Stiles*, or their Issue. (No. 3.) — On Failure of the Descendants of JOHN STILES himself, the Issue of *Geoffery and Lucy Stiles*, his Parents, is called in: viz, First, *Francis Stiles*, the eldest Brother of the whole Blood, or his Issue: (No. 4.) Then *Oliver Stiles*, and the other whole Brothers, respectively, in Order of Birth, or their Issue: (No. 5.) Then the Sisters of the whole Blood, ALL together, *Bridget and Alice Stiles*, or their Issue. (No. 6.) — In Defect of these, the Issue of *George and Cecilia Stiles*, his Father's Parents; Respect being still had to their Age and Sex: (No. 7.) Then the Issue of *Walter and Christian Stiles*, the Parents of his paternal Grandfather: (No. 8.) Then the Issue of *Richard and Anne Stiles*, the Parents of his paternal Grandfather's Father: (No. 9.) And so on in the paternal Grandfather's paternal Line, or Blood of *Walter Stiles*, in infinitum. — In Defect of these, the Issue of *William and Jane Smith*, the Parents of his paternal Grandfather's Mother: (No. 10.) And so on in the paternal Grandfather's maternal Line, or Blood of *Christian Smith*, in infinitum; till both the immediate Bloods of *George Stiles*, the paternal Grandfather, are spent. — Then we must resort to the Issue of *Luke and Frances Kempe*, the Parents of JOHN STILES's paternal Grandmother: (No. 11.) Then to the Issue of *Thomas and Sarah Kempe*, the Parents of his paternal Grandmother's Father: (No. 12.) And so on in the paternal Grand-

No. II.

Grandmother's paternal Line, or Blood of *Luke Kempe*, in *infinitum*. — In Default of which, we must call in the Issue of *Charles* and *Mary Holland*, the Parents of his paternal Grandmother's Mother: (No. 13.) And so on in the paternal Grandmother's maternal Line, or Blood of *Frances Holland*, in *infinitum*; till both the immediate Bloods of *Cecilia Kempe*, the paternal Grandmother, are also spent. — Whereby the PATERNAL Blood of JOHN STILES entirely failing, Recourse must then, and not before, be had to his MATERNAL Relations; or the Blood of the *Bakers*, (No. 14, 15, 16.) *Willis's*, (No. 17.) *Thorpes*, (No. 18, 19.) and *Whites*; (No. 20.) in the same regular, successive, Order as in the paternal Line.

IN case JOHN STILES was not himself the Purchaser, but the Estate in fact came to him by DESCENT from his Father, Mother, or any higher Ancestor, there is this Difference; that the Blood of that Line of Ancestors, from which it did not descend, can never inherit; but the Estate shall rather escheat to the Lord of the Fee. Thus, if it descended from *Geoffery Stiles*, the Father, the Blood of *Lucy Baker*, the Mother, is perpetually excluded: And so, *vice versa*, if it descended from *Lucy Baker*, it cannot descend to the Blood of *Geoffery Stiles*. This, in either Case, cuts off one half of the TABLE from Succession: And further, if it can be shewn to have descended from *George Stiles*, this cuts off three fourths; for now the Blood, not only of *Lucy Baker*, but also of *Cecilia Kempe*, is excluded. If, lastly, it descended from *Walter Stiles*, this narrows the Succession still more, and cuts off seven eighths of the TABLE; for now, neither the Blood of *Lucy Baker*, nor of *Cecilia Kempe*, nor of *Christian Smith*, can ever succeed to the Inheritance. And the like Rule will hold upon Descents from any other Ancestors.

THE Student should bear in Mind, that, during this whole Process, JOHN STILES is the only Person supposed to have been actually SEISED of the Estate: For if ever it comes to vest in any other Person, as Heir to JOHN STILES, a new Order of Succession must be observed upon the Death of such Heir; since He, by his own Seisin, now becomes himself an Ancestor, or *Stipes*, and must be put in the place of JOHN STILES. The Figures therefore denote the Order, in which the several Classes would succeed to JOHN STILES, and not to each other:

And,

And, before we search for an Heir in any of the higher Figures, (as, No. 8.) we must be first assured that all the lower Classes (from No. 1 to 7.) were extinct, at JOHN STILES's Decease.

SUCH is apprehended to be the uniform Course of Inheritance, according to the Law of ENGLAND. The Student should, however, be informed, that the Class, No. 10, would be postponed to No. 11, in consequence of the Doctrine laid down, *arguendo*, by Justice MANWOOD, in the Case of CLERE and BROOKE^d; from *d* PLOWD. 450. whence it is adopted by Lord BACON^e, and Sir MATTHEW HALE^f. — And yet, notwithstanding these respectable Authorities, the Compiler of this TABLE hath ventured to give the Preference therein to No. 10 before No. 11; for the following Reasons:

1. BECAUSE this Point was not the PRINCIPAL Question in the Case of CLERE and BROOKE; but the Law concerning it is delivered *obiter* only, and in the course of Argument, by Justice MANWOOD; though afterwards said to be confirmed by the three other Justices in separate, extrajudicial, Conferences with the Reporter.

2. BECAUSE the Chief-Justice, DYER, in reporting the Resolution of the Court in what seems to be the same Case^g, takes no Notice of this Doctrine.

^g DYER, 314.

3. BECAUSE it appears, from PLOWDEN's Report, that very many Gentlemen of the Law were dissatisfied with this Position of Justice MANWOOD.

4. BECAUSE the Position itself destroys the otherwise entire and regular Symmetry of our legal Course of Descents, as is manifest by inspecting the TABLE; and destroys also that constant Preference of the male Stocks in the Law of Inheritance, for which perhaps an additional Reason might be given, besides the mere Dignity of Blood.

5. BECAUSE it introduces all that Uncertainty and Contradiction, pointed out by an ingenious Author^b; and establishes a collateral Doctrine, incompatible with the principal Point resolved in the Case of CLERE and BROOKE, viz. the Preference of No. 11 to No. 14. And, though that learned Writer proposes to rescind the PRINCIPAL Point then resolved, in order to clear this Difficulty; it is apprehended, that the Difficulty may be better cleared, by rejecting the COLLATERAL Doctrine, which was never yet resolved at all.

6. BE-

^b Law of Inheritances, 2d Edit. p. 30, 38, 61, 62, 66.

No. II.

6. BECAUSE by the Reason that is given for this Doctrine, in PLOWDEN, BACON, and HALE, (viz. That in any Degree, paramount the first, the Law respecteth Proximity, and not Dignity of Blood) No. 18 ought also to be preferred to No. 16; which is directly contrary to *i* Hist. C. L. 247. the eighth Rule laid down by HALE himself *i*.

7. BECAUSE this Position seems to contradict the allowed Doctrine of Sir EDWARD COKE *k*; who lays it down (under different Names) that the Blood of the KEMPES (*alias* SANDIES) shall not inherit till the Blood of the STILES's (*alias* FAIRFIELDS) fail. Now the Blood of the STILES's does certainly not fail, till both No. 9 and No. 10 are extinct. Wherefore No. 11 (being the Blood of the KEMPES) ought not to inherit till then.

8. BECAUSE in the Case, M. 12 ED. IV. 14. *l* (much relied on in that of CLERE and BROOKE) it is laid down as a Rule, that "*Cestuy, que doit inheriter al Pere, doit inheriter al Fils.*" And so Sir M. HALE *m* says, "that though the Law excludes the Father from inheriting, yet it substitutes and directs the Descent, as it should have been, had the Father inherited." Now it is settled, by the Resolution in CLERE and BROOKE, that No. 10 should have inherited to *Geoffery Stiles*, the Father, before No. 11; and therefore No. 10 ought also to be preferred in inheriting to JOHN STILES, the Son.

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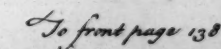
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II.

PATERNAL LINE

MATERNAL LINE



Lissivora

No. III.

Vetus Carta FEOFFAMENTI.

SCiant presentes & futuri, quod ego *Willielmus*, filius *Premises*,
Willielmi de Segenbo, dedi, concessi, & hac presenti
carta mea confirmavi, *Johanni* quondam filio *Johannis* de
Saleford, pro quadam summa pecunie quam michi dedit
pre manibus, unam acram terre mee arabilis, jacentem
in campo de *Saleford*, juxta terram quondam *Richardi* de
la Mare: **Habendam & Tenendam** totam predictam *Habendum, and*
acram terre, cum omnibus ejus pertinentiis, prefato *Jo-* *Tenendum.*
banni, & heredibus suis, & suis assignatis, de capitalibus do-
minis feodi: **Reddendo** & faciendo annuatim eisdem *Reddendum.*
dominis capitalibus servitia inde debita & consueta: **Et** *Warranty.*
ego predictus *Willielmus*, & heredes mei, & mei assignati,
totam predictam acram terre, cum omnibus suis pertinen-
tiis, predicto *Johanni* de *Saleford*, & heredibus suis, &
suis assignatis, contra omnes gentes warrantizabimus in
perpetuum. **In cujus** rei testimonium huic presenti car- *Conclusion.*
te sigillum meum apposui: **His** testibus, *Nigello* de *Sale-*
ford, *Johanne* de *Seybroke*, *Radulpho* clerico de *Saleford*,
Johanne molendario de eadem villa, & aliis. **Data** apud
Saleford die Veneris proximo ante festum sancte *Marga-*
rete virginis, anno regni regis *EDWARDI* filii regis *ED-*
WARDI sexto.

L. S.

Memorandum, quod die & anno
infrascriptis plena & pacifica seifina acre
infrascripticate, cum pertinentiis, data
& deliberata fuit per infranominatum
Willielmum de *Segenbo* infranominato
Johanni de *Saleford*, in propriis perso-
nis suis, secundum tenorem & effectum
carte infrascripte in presentia *Nigelli* de
Saleford, *Johannis* de *Seybroke*, & alio-
rum.

Livery of Seisin
endorfed.

No. IV.

No. IV.



No. IV.

A modern Conveyance by LEASE and RELEASE.

§. I. LEASE, or BARGAIN and SALE, for a Year.

Premises.

Parties.

Consideration.

Bargain and Sale.

Parcels.

This Indenture, made the third Day of September, in the twenty first Year of the Reign of our sovereign Lord GEORGE the second, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, and so forth, and in the Year of our Lord, one thousand, seven hundred, and forty seven, between Abraham Barker of Dale Hall in the County of Norfolk, Esquire, and Cecilia his Wife, of the one Part, and David Edwards of Lincoln's Inn in the County of Middlesex, Esquire, and Francis Golding of the City of Norwich, Clerk, of the other Part, witnesseth; that the said Abraham Barker and Cecilia his Wife, in Consideration of five Shillings of lawful Money of Great Britain to them in Hand paid by the said David Edwards and Francis Golding at or before the Ensealing and Delivery of these Presents (the Receipt whereof is hereby acknowledged) and for other good Causes and Considerations them the said Abraham Barker and Cecilia his Wife hereunto especially moving, have bargained and sold, and by these Presents do, and each of them doth, bargain and sell, unto the said David Edwards and Francis Golding, their Executors, Administrators, and Assigns, **All** that the capital Messuage, called Dale Hall in the Parish of Dale in the said County of Norfolk, wherein the said Abraham Barker and Cecilia his Wife now dwell, and all those their Lands in the said Parish of Dale called or known by the Name of Wilson's Farm, containing by Estimation five hundred and forty Acres, be the same more or less, together with all and singular Houses, Dovehouses, Barns, Buildings, Stables, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Woods, Underwoods, Ways, Waters, Watercourses, Fishings, Privileges, Profits, Easements, Commodities, Advantages, Emoluments, Hereditaments, and Appurtenances whatsoever to the said capital Messuage and

and Farm belonging or appertaining, or with the same used or enjoyed, or accepted, reputed, taken, or known, as Part, Parcel, or Member thereof, or as belonging to the same or any Part thereof; and the Reversion and Reversions, Remainder and Remainders, yearly and other Rents, Issues, and Profits thereof, and of every Part and Parcel thereof, and also all the Estate, Right, Title, Interest, Trust, Property, Claim, and Demand whatsoever, both at Law and in Equity, of them the said *Abraham Barker* and *Cecilia* his Wife, in, to, or out of, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises: **To have and to hold** the said capital *Habendum.* Messuage, Lands, Tenements, Hereditaments, and all and singular other the Premises herein before mentioned, or intended, to be bargained and sold, and every Part and Parcel thereof, with their and every of their Rights, Members, and Appurtenances, unto the said *David Edwards* and *Francis Golding*, their Executors, Administrators and Assigns, from the Day next before the Day of the Date of these Presents, for and during, and unto the full End and Term of one whole Year, from thence next ensuing and fully to be complete and ended: **Yielding** *Reddendum.* and paying therefore unto the said *Abraham Barker*, and *Cecilia* his Wife, and their Heirs or Assigns, the yearly Rent of one Pepper-Corn at the Expiration of the said Term, if the same shall be lawfully demanded: **To the** *Intent.* **Intent** and Purpose, that by Virtue of these Presents, and of the Statute for transferring Uses into Possession, the said *David Edwards* and *Francis Golding* may be in the actual Possession of the Premises, and be thereby enabled to take and accept a Grant and Release of the Freehold, Reversion, and Inheritance of the same Premises, and of every Part and Parcel thereof, to them, their Heirs, and Assigns; to the Uses, and upon the Trusts, thereof to be declared by another Indenture, intended to bear Date the Day next after the Day of the Date hereof. **In Witness** whereof the Parties to these Presents their Conclusion. Hands and Seals have subscribed and set, the Day and Year first abovewritten.

Sealed, and delivered, being first duly stamped, in the presence of
George Carter.
William Browne.

Abraham Barker. L. S.
Cecilia Barker. L. S.
David Edwards. L. S.
Francis Golding. L. S.
 §. 2. Deed

No. IV.

§. 2. Deed of RELEASE.

Premises.

Parties.

Recital.

Consideration.

This Indenture of four Parts made the fourth Day of *September*, in the twenty first Year of the Reign of our sovereign Lord *GEORGE* the second, by the Grace of God, King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven, between *Abraham Barker* of *Dale Hall* in the County of *Norfolk*, Esquire, and *Cecilia* his Wife, of the first Part ; *David Edwards* of *Lincoln's Inn* in the County of *Middlesex*, Esquire, Executor of the last Will and Testament of *Lewis Edwards*, of *Cowbridge* in the County of *Glamorgan*, Gentleman, his late Father, deceased, and *Francis Golding* of the City of *Norwich*, Clerk, of the second Part ; *John Barker*, Esquire, Son and Heir apparent of the said *Abraham Barker*, of the third Part ; and *Katherine Edwards*, Spinster, one of the Sisters of the said *David Edwards*, of the fourth Part. **Whereas** a Marriage is intended, by the Permission of God, to be shortly had and solemnized between the said *John Barker* and *Katherine Edwards* : **Now this Indenture witnesseth**, that in Consideration of the said intended Marriage, and of the Sum of five thousand Pounds, of good and lawful Money of *Great Britain*, to the said *Abraham Barker*, (by and with the Consent and Agreement of the said *John Barker*, and *Katherine Edwards*, testified by their being Parties to, and their Sealing, and Delivery of these Presents) by the said *David Edwards* in Hand paid at or before the Ensealing and Delivery hereof, being the Marriage Portion of the said *Katherine Edwards*, bequeathed to her by the last Will and Testament of the said *Lewis Edwards*, her late Father, deceased ; the Receipt and Payment whereof the said *Abraham Barker* doth hereby acknowledge, and thereof, and of every Part and Parcel thereof, they the said *Abraham Barker*, *John Barker*, and *Katherine Edwards* do, and each of them doth, release, acquit, and discharge the said *David Edwards*, his Executors, and Administrators, for ever by these Presents : And for providing a competent Jointure and Provision of Maintenance for the said *Katherine Edwards*, in case she shall, after the said intended Marriage had, survive and overlive the said *John Barker* her intended Husband : And for settling and as-
surig

furing the capital Messuage, Lands, Tenements, and Hereditaments, hereinafter mentioned, unto such Uses, and upon such Trusts, as are hereinafter expressed and declared : And for and in Consideration of the Sum of five Shillings of lawful Money of *Great Britain* to the said *Abraham Barker* and *Cecilia* his Wife in Hand paid by the said *David Edwards* and *Francis Golding*, at or before the Ensealing and Delivery hereof (the Receipt whereof is hereby acknowledged) they the said *Abraham Barker* and *Cecilia* his Wife, **have**, and each of them hath, granted, Release. bargained, sold, released, and confirmed, and by these Presents do, and each of them doth, grant, bargain, sell, release, and confirm, unto the said *David Edwards* and *Francis Golding*, their Heirs and Assigns, **All** that the ca- Parcels.
 pital Messuage, called *Dale-Hall* in the Parish of *Dale* in the said County of *Norfolk*, wherein the said *Abraham Barker* and *Cecilia* his Wife now dwell, and all those their Lands in the said Parish of *Dale* called or known by the Name of *Wilson's Farm*, containing by Estimation five hundred and forty Acres, be the same more or less, together with all and singular Houses, Dovehouses, Barns, Buildings, Stables, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Woods, Underwoods, Ways, Waters, Watercourses, Fishings, Privileges, Profits, Easements, Commodities, Advantages, Emoluments, Hereditaments, and Appurtenances whatsoever to the said capital Messuage and Farm belonging or appertaining, or with the same used or enjoyed, or accepted, reputed, taken, or known, as Part, Parcel, or Member thereof, or as belonging to the same or any Part thereof ; and the Reversion and Reversions, Remainder and Remainders, yearly and other Rents, Issues, and Profits thereof, and of every Part and Parcel thereof, and also all the Estate, Right, Title, Interest, Trust, Property, Claim, and Demand whatsoever, both at Law and in Equity, of them the said *Abraham Barker* and *Cecilia* his Wife, in, to, or out of, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises : **To have and to hold** Habendum.
 the said capital Messuage, Lands, Tenements, Hereditaments, and all and singular other the Premises herein beforementioned to be hereby granted and released, with their and every of their Appurtenances, unto the said *David Edwards* and *Francis Golding*, their Heirs and Assigns, to such Uses, upon such Trusts, and to and for such Intents

No. IV.

To the Use of the
Grantors till Mar-
riage:

Then of the Hus-
band for Life, *sans*
Waste :

Remainder to the
Trustees, to pre-
serve contingent
Remainders :

Remainder to the
Wife for Life, for
her Jointure, in
Bar of Dower :

Remainder to the
first and other
Sons of the Mar-
riage, in Tail :

tents and Purposes as are herein-after mentioned, expressed, and declared, of and concerning the same : That is to say, to the Use and Behoof of the said *Abraham Barker*, and *Cecilia* his Wife, according to their several and respective Estates and Interests therein, at the Time of, or immediately before, the Execution of these Presents, until the Solemnization of the said intended Marriage : And from and after the Solemnization thereof, to the Use and Behoof of the said *John Barker*, for and during the Term of his natural Life ; without Impeachment of or for any Manner of Waste : And from and after the Determination of that Estate, then to the Use of the said *David Edwards* and *Francis Golding*, and their Heirs, during the Life of the said *John Barker*, upon Trust to support and preserve the contingent Uses and Estates hereinafter limited from being defeated and destroyed, and for that Purpose to make Entries, or bring Actions, as the Case shall require ; but nevertheless to permit and suffer the said *John Barker*, and his Assigns, during his Life, to receive and take the Rents and Profits thereof, and of every Part thereof, to and for his and their own Use and Benefit : And from and after the Decease of the said *John Barker*, then to the Use and Behoof of the said *Katherine Edwards*, his intended Wife, for and during the Term of her natural Life, for her Jointure, and in Lieu, Bar, and Satisfaction of her Dower and Thirds at common Law, which she can or may have or claim, of, in, to, or out of, all, and every, or any, of the Lands, Tenements, and Hereditaments, whereof or wherein the said *John Barker* now is, or at any Time or Times hereafter during the Coverture between them shall be, seised of any Estate of Freehold or Inheritance : And from and after the Decease of the said *Katherine Edwards*, or other sooner Determination of the said Estate, then to the Use and Behoof of the first Son of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to be begotten, and of the Heirs of the Body of such first Son lawfully issuing ; and for Default of such Issue, then to the Use and Behoof of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and of all and every other the Son and Sons of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to be begotten, severally, successively, and in Remainder, one after another, as they and every of them shall be in Seniority

Seniority of Age and Priority of Birth, and of the several respective Heirs of the Body and Bodies of all and every such Son and Sons lawfully issuing; the elder of such Sons, and the Heirs of his Body issuing, being always to be preferred and to take before the younger of such Son or Sons, and the Heirs of his and their Body and Bodies issuing: And for Default of such Issue, then to the Use and Behoof of all and every the Daughter and Daughters of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to be begotten, to be equally divided between them, (if more than one) share and share alike, as Tenants in common and not as Jointenants, and of the several and respective Heirs of the Body and Bodies of all and every such Daughter and Daughters lawfully issuing: And for Default of such Issue, then to the Use and Behoof of the Heirs of the Body of him the said *John Barker* lawfully issuing: And for Default of such Heirs, then to the Use and Behoof of the said *Cecilia*, the Wife of *Abraham Barker*, and of her Heirs and Assigns for ever. And, for the Considerations aforesaid, and for barring all Estates tail, and all Remainders and Reversions thereupon expectant or depending, if any be now subsisting, and unbarred, or otherwise undetermined, of and in the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, hereby granted and released, or mentioned to be hereby granted and released, or any of them, or any Part thereof, the said *Abraham Barker* for himself and the said *Cecilia* his Wife, his and her Heirs, Executors, and Administrators, and the said *John Barker* for himself, his Heirs, Executors, and Administrators, do, and each of them doth, respectively covenant, promise, and grant, to and with the said *David Edwards* and *Francis Golding*, their Heirs, Executors, and Administrators, by these Presents, that they the said *Abraham Barker* and *Cecilia* his Wife, and *John Barker*, shall and will, at the Costs and Charges of the said *Abraham Barker*, before the End of *Michaelmas* Term next ensuing the Date hereof, acknowledge and levy, before his Majesty's Justices of the Court of common Pleas at *Westminster*, one or more Fine or Fines, *sur Cognizance de Droit, come ceo, &c.* with Proclamations according to the Form of the Statutes in that case made and provided, and the usual Course of Fines in such Cases accustomed, unto the said *David Edwards*, and his Heirs, of the said capital

Remainder to the Daughters, in Tail, as Tenants in common:

Remainder to the Husband in Tail:

Remainder to the Husband's Mother in Fee.

Covenant, to levy a Fine,

No. IV.

to make a Tenant
to the *Præcipe*,

that a Recovery
may be suffered ;

tal Messuage, Lands, Tenements, Hereditaments, and Premises, by such apt and convenient Names, Quantities, Qualities, Number of Acres, and other Descriptions to ascertain the same, as shall be thought meet : Which said Fine or Fines, so as aforesaid, or in any other Manner levied, or to be levied, and acknowledged, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are, and were, meant, and intended, to be and enure, and are hereby declared by all the said Parties to these Presents to be and enure, to the Use and Behoof of the said *David Edwards* and his Heirs, and Assigns, to the Intent and Purpose that the said *David Edwards* may, by virtue of the said Fine or Fines so covenanted and agreed to be levied as aforesaid, be and become perfect Tenant of the Freehold of the said capital Messuage, Lands, Tenements, Hereditaments, and all other the Premises, to the end that one or more good and perfect common Recovery or Recoveries may be thereof had and suffered, in such Manner as is hereinafter for that Purpose mentioned. And it is hereby declared and agreed by and between all the said Parties to these Presents, that it shall and may be lawful to and for the said *Francis Golding*, at the Costs and Charges of the said *Abraham Barker*, before the End of *Michaelmas* Term next ensuing the Date hereof, to sue forth and prosecute out of his Majesty's high Court of Chancery one or more Writ or Writs of Entry *sur Disseisin en le Poss*, returnable before his Majesty's Justices of the Court of common Pleas at *Westminster*, thereby demanding by apt and convenient Names, Quantities, Qualities, Number of Acres, and other Descriptions, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, against the said *David Edwards* ; to which said Writ, or Writs, of Entry he the said *David Edwards* shall appear *gratis*, either in his own proper Person, or by his Attorney thereto lawfully authorized, and vouch over to Warranty the said *Abraham Barker*, and *Cecilia* his Wife, and *John Barker*, who shall also *gratis* appear in their proper Persons, or by their Attorney, or Attorneys, thereto lawfully authorized, and enter into the Warranty, and vouch over to Warranty the common Vouchee of the same Court, who shall also appear, and after Imparlance shall make Default, so as Judgment shall and may be thereupon had and given for the said *Francis Golding*, to recover the said capital Messuage,

suage, Lands, Tenements, Hereditaments, and Premises, against the said *David Edwards*, and for him to recover in Value against the said *Abraham Barker*, and *Cecilia* his Wife, and *John Barker*, and for them to recover in Value against the said common Vouchee, and that Execution shall and may be thereupon awarded and had accordingly, and all and every other Act and Thing be done and executed, needful and requisite for the Suffering and Perfecting of such common Recovery or Recoveries, with Vouchers as aforesaid. And it is hereby further declared and agreed to enure by and between all the said Parties to these Presents, that immediately from and after the Suffering and Perfecting of the said Recovery or Recoveries, so as aforesaid, or in any other Manner, or at any other Time or Times, suffered or to be suffered, as well these Presents and the Assurance hereby made, and the said Fine or Fines so covenanted to be levied as aforesaid, as also the said Recovery or Recoveries, and also all and every other Fine and Fines, Recovery and Recoveries, Conveyances, and Assurances in the Law whatsoever heretofore had, made, levied, suffered, or executed, or hereafter to be had, made, levied, suffered, or executed, of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, or any of them, or any Part thereof, by and between the said Parties to these Presents or any of them, or wherunto they or any of them are or shall be Parties or Privies, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended to be and enure, and the Recoveror or Recoverors in the said Recovery or Recoveries named or to be named, and his or their Heirs, shall stand and be seised of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, and of every Part and Parcel thereof, to the Uses, upon the Trusts, and to and for the Intents and Purposes, and under and subject to the Provisoes, Limitations, and Agreements, herein before mentioned, expressed, and declared, of and concerning the same. And the said *Abraham Barker*, Party hereunto, doth hereby for himself, his Heirs, Executors, and Administrators, further covenant, promise, grant, and agree to and with the said *David Edwards* and *Francis Golding*, their Heirs, Executors, and Administrators, in Manner and Form following, that is to say, That the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, shall and may at

to the preceding
Uses in this Deed.

Covenants;

for quiet Enjoy-
ment,

No. IV.

free from Incum-
brances;

and for further
Assurance,

all Times hereafter remain, continue, and be, to and for the Uses and Purposes, upon the Trusts, and under and subject to the Provisoos, Limitations, and Agreements, hereinbefore mentioned, expressed, and declared, of and concerning the same; and shall and may be peaceably and quietly had, held, and enjoyed accordingly, without any lawful Let or Interruption of or by the said *Abraham Barker* or *Cecilia* his Wife, Parties hereunto, his or her Heirs or Assigns, or of or by any other Person or Persons lawfully claiming or to claim from, by, or under, or in Trust for him, her, them, or any of them, or from, by, or under his or her Ancestors, or any of them; and shall so remain, continue, and be, free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said *Abraham Barker*, or *Cecilia* his Wife, Parties hereunto, his or her Heirs, Executors, or Administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all former and other Gifts, Grants, Bargains, Sales, Leases, Mortgages, Estates, Titles, Troubles, Charges, and Incumbrances whatsoever, had, made, done, committed, occasioned, or suffered, or to be had, made, done, committed, occasioned, or suffered, by the said *Abraham Barker*, or *Cecilia* his Wife, or by his or her Ancestors, or any of them, or by his, her, their, or any of their Act, Means, Assent, Consent, and Procurement: **And moreover** that he the said *Abraham Barker*, and *Cecilia* his Wife, Parties hereunto, and his and her Heirs, and all other Persons having or lawfully claiming, or which shall or may have or lawfully claim, any Estate, Right, Title, Trust, or Interest, at Law or in Equity, of, in, to, or out of, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, or any of them, or any Part thereof, by, or under, or in Trust for him, her, them, or any of them, or by or under his or her Ancestors or any of them, shall and will from Time to Time, and at all Times hereafter, upon every reasonable Request, and at the Costs and Charges, of the said *David Edwards* and *Francis Golding*, or either of them, their or either of their Heirs, Executors, or Administrators, make, do, and execute, or cause to be made, done, and executed, all such further and other lawful and reasonable Acts, Deeds, Conveyances, and Assurances in the Law whatsoever, for the further, better, more perfect, and absolute Granting,

Granting, Conveying, Settling, and Assuring of the same capital Messuage, Lands, Tenements, Hereditaments, and Premises, to and for the Uses and Purposes, upon the Trusts, and under and subject to the Provisoes, Limitations, and Agreements, herein mentioned, expressed, and declared, of and concerning the same, as by the said *David Edwards* and *Francis Golding* or either of them, their or either of their Heirs, Executors, or Administrators, or their or any of their Counsel learned in the Law shall be reasonably advised, devised, or required : So as such further Assurances contain in them no further or other Warranty or Covenants than against the Person or Persons, his, her, or their Heirs, who shall make or do the same ; and so as the Party or Parties, who shall be requested to make such further Assurances, be not compelled or compellable, for making or doing thereof, to go and travel above five Miles from his, her, or their then respective Dwellings, or Places of Abode. **In Witness whereof** Conclusion, the Parties to these Presents their Hands and Seals have subscribed and set, the Day and Year first above written.

Sealed, and delivered, being
first duly stamped, in the
presence of
George Carter.
William Browne.

Abraham Barker. L. S.
Cecilia Barker. L. S.
David Edwards. L. S.
Francis Golding. L. S.
John Barker. L. S.
Katherine Edwards. L. S.

No. V.



No. V.

*An OBLIGATION, with CONDITION for the
Payment of Money.*

K Now all Men by these Presents that I *David Edwards*, of *Lincoln's Inn* in the County of *Middlesex*, Esquire, am held and firmly bound to *Abraham Barker* of *Dale-Hall* in the County of *Norfolk*, Esquire, in ten thousand Pounds of lawful Money of *Great Britain*, to be paid to the said *Abraham Barker*, or his certain Attorney, Executors, Administrators, and Assigns; for which Payment well and truly to be made, I bind myself, my Heirs, Executors, and Administrators firmly by these Presents, sealed with my Seal. Dated the fourth Day of *September* in the twenty first Year of the Reign of our sovereign Lord *GEORGE* the second, by the Grace of God, King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven.

The Condition of this Obligation is such, that if the above bounden *David Edwards*, his Heirs, Executors, or Administrators, do and shall well and truly pay, or cause to be paid, unto the above named *Abraham Barker*, his Executors, Administrators, or Assigns, the full Sum of five thousand Pounds of lawful *British* Money, with lawful Interest for the same on the fourth Day of *March* next ensuing the Date of the above written Obligation, then this Obligation shall be void and of none Effect, or else shall be and remain in full Force and Virtue.

Sealed, and delivered, being
first duly stamped, in the
presence of

George Carter.

William Browne.

David Edwards. L. S.

No. VI.

No. VI.

*A FINE of Lands, sur Cognizance de Droit,
come ceo, &c.*

§. 1. *Writ of Covenant; or, PRAECIPE.*

GEORGE the second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, To the Sheriff of Norfolk, Greeting. **Command** Abraham Barker, Esquire, and Cecilia his Wife, and John Barker, Esquire, that justly and without Delay they perform to David Edwards, Esquire, the Covenant made between them of two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in Dale; and unless they shall so do, and if the said David shall give you Security of prosecuting his Claim, then summon by good Summoners the said Abraham, Cecilia, and John, that they appear before our Justices at Westminster, from the Day of Saint Michael in one Month, to shew wherefore they have not done it: And have you there the Summoners, and this Writ. **Witness** Ourselves at Westminster the ninth Day of October in the twenty first Year of our Reign.

| | | | | | |
|-------------|---|--------------|---|--------------|-------------------|
| Pledges of | { | John Doe. | { | John Den. | Sheriff's Return. |
| Prosecution | | Richard Roe. | | Richard Fen. | |

§. 2. *The Licence to agree.*

Norfolk, } David Edwards, Esquire, gives to the
to wit. } Lord the King ten Marks for Licence to
agree with Abraham Barker, Esquire, and Cecilia his
Wife, and John Barker, Esquire, of a Plea of Covenant
of two Messuages, two Gardens, three hundred Acres of
Land, one hundred Acres of Meadow, two hundred
Acres of Pasture, and fifty Acres of Wood, with the Ap-
purtenances, in Dale.

§. 3. *The*

§. 3. *The Concord.*

And the Agreement is such, to wit, that the aforesaid *Abraham, Cecilia, and John*, have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David*, as those which the said *David* hath of the Gift of the aforesaid *Abraham, Cecilia, and John*; and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham, Cecilia, and John*, have granted, for themselves and their Heirs, that they will warrant to the aforesaid *David*, and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit Claim, Warranty, Fine, and Agreement, the said *David* hath given to the said *Abraham, Cecilia, and John*, two hundred Pounds sterling.

§. 4. *The Note, or Abstract.*

Norfolk, } **Between** *David Edwards*, Esquire, Com-
to wit. } plainant, and *Abraham Barker*, Esquire, and
Cecilia his Wife, and *John Barker*, Esquire, Deforciant,
of two Messuages, two Gardens, three hundred Acres of
Land, one hundred Acres of Meadow, two hundred
Acres of Pasture, and fifty Acres of Wood, with the
Appurtenances, in *Dale*, whereupon a Plea of Covenant
was summoned between them; to wit, that the said *Abraham, Cecilia, and John*, have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David*, as those which the said *David* hath of the Gift of the aforesaid *Abraham, Cecilia, and John*; and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham, Cecilia, and John*, have granted for themselves, and their Heirs, that they will warrant to the aforesaid *David*, and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit Claim, Warranty, Fine, and Agreement, the said *David* hath given to the said *Abraham, Cecilia, and John*, two hundred Pounds sterling.

§. 5. *The*

§. 5. *The Foot, or Indentures, of the FINE.*

Norfolk, } **This is the final Agreement,** made in
to wit. } the Court of the Lord the King at *Westmin-*
ster, from the Day of Saint *Michael* in one Month, in the
twenty first Year of the Reign of the Lord *GEORGE* the
second, by the Grace of God, of *Great Britain, France,*
and *Ireland* King, Defender of the Faith, and so forth,
before *John Willes, Thomas Abney, Thomas Burnet, and*
Thomas Birch, Justices, and other faithful Subjects of the
Lord the King then there present, between *David Ed-*
wards, Esquire, Complainant, and *Abraham Barker*,
Esquire, and *Cecilia* his Wife, and *John Barker*, Esquire,
Deforciants, of two Messuages, two Gardens, three hun-
dred Acres of Land, one hundred Acres of Meadow, two
hundred Acres of Pasture, and fifty Acres of Wood, with
the Appurtenances, in *Dale*, whereupon a Plea of Cove-
nant was summoned between them in the same Court :
To wit ; that the aforesaid *Abraham, Cecilia, and John*,
have acknowledged the aforesaid Tenements, with the
Appurtenances, to be the Right of him the said *David*,
as those which the said *David* hath of the Gift of the a-
foresaid *Abraham, Cecilia, and John* ; and those they
have remised and quitted Claim, from them and their
Heirs, to the aforesaid *David* and his Heirs for ever.
And further, the same *Abraham, Cecilia, and John*, have
granted, for themselves and their Heirs, that they will
warrant to the aforesaid *David* and his Heirs, the afore-
said Tenements, with the Appurtenances, against all Men
for ever. And for this Recognition, Remise, Quit Claim,
Warranty, Fine, and Agreement, the said *David* hath
given to the said *Abraham, Cecilia, and John*, two hun-
dred Pounds sterling.

§. 6. *Proclamations, endorsed upon the FINE, according
to the Statutes.*

The first Proclamation was made the sixteenth day of
November, in the Term of Saint *Michael*, in the twenty
first Year of the King withinwritten.

The second Proclamation was made the fourth day of
February, in the Term of Saint *Hilary*, in the twenty first
Year of the King withinwritten.

The

No. VI.

The third Proclamation was made the thirteenth Day of *May*, in the Term of *Easter*, in the twenty first Year of the King withinwritten.

The fourth Proclamation was made the twenty eighth Day of *June*, in the Term of the holy *Trinity*, in the twenty second Year of the King withinwritten.

No. VII.

*A common Recovery of Lands, with * double Voucher.*

§. 1. *Writ of Entry sur Disseisin in the Post; or*
PRAECIPE.

GEORGE the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth; To the Sheriff of *Norfolk*, Greeting: **Command** *David Edwards*, Esquire, that justly, and without delay, he render to *Francis Golding*, Clerk, two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*, which he claims to be his Right and Inheritance, and into which the said *David* hath not Entry, unless after the Disseisin which *Hugh Hunt* thereof unjustly and without Judgment hath made to the aforesaid *Francis*, within thirty Years now last past, as he saith, and whereupon he complains that the aforesaid *David* deforceth him. And unless he shall so do, and if the said *Francis* shall give you Security of prosecuting his Claim, then summon by good Summoners the said *David*, that he appear before our Justices at *Westminster*, on the Octave of Saint *Martin*, to shew wherefore he hath not done it: And have you there the Summoners, and this Writ. **Witness** Ourselves at *Westminster*, the

* Note, that if the Recovery be had with single Voucher, the Parts marked "thus" in §. 2. are omitted.

twenty ninth Day of *October*, in the twenty first Year of our Reign.

No. VII.

Pledges of Prosecution { *John Doe,*
 { *Richard Roe.*

Summoners

{ *John Den,*
 { *Richard Fen.*

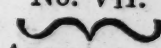
Sheriff's Return.

§. 2. *Exemplification of the RECOVERY Roll.*

GEORGE the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, To all to whom these our present Letters shall come, Greeting: **Know ye**, that among the Pleas of Land, enrolled at *Westminster*, before Sir *John Willes*, Knight, and his Fellows, our Justices of the Bench, of the Term of *Saint Michael*, in the twenty first Year of our Reign, upon the fifty second Roll it is thus contained. **Portfolk**, to wit: *Francis Golding*, Demand against Clerk, in his proper Person demandeth against *David Edwards*, the Tenant, Esquire, two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*, as his Right and Inheritance, and into which the said *David* hath not Entry, unless after the Disseisin, which *Hugh Hunt* thereof unjustly, and without Judgment, hath made to the aforesaid *Francis*, within thirty Years now last past. And where Count. upon he saith, that he himself was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee and Right, in Time of Peace, in the Time of the Lord the King that now is, by taking the Profits thereof to the Value [* of six Shillings and eight Pence and more in Rents, Corn, and Grass:] And into which [the said Defence of Tenant. *David* hath not Entry, unless as aforesaid:] And there- upon he bringeth Suit, [and good Proof.] And the said *David* in his proper Person comes and defendeth his Right, when [and where the Court shall award,] and thereupon Voucher. voucheth to Warranty "*Abraham Barker*, Esquire, and "*Cecilia* his Wife, and *John Barker*, Esquire; who are "present here in Court in their proper Persons, and the Warranty.

*. The Clauses, between Hooks, in this and the subsequent Numbers of the Appendix, are no otherwise expressed in the Records than by an &c. Which Abbreviation frequently rendering them obscure, especially to Beginners, the full Reading is here endeavoured to be given, partly from Conjecture, and partly from antient Authorities.

| | |
|--|--|
| No. VII. | "Tenements aforesaid with the Appurtenances to him |
| "Demand against
"the Vouchees. | "freely warrant, [and pray that the said <i>Francis</i> may
"count against them.] And hereupon the said <i>Francis</i> de-
"mandeth against the said <i>Abraham, Cecilia, and John,</i> |
| "Count, | "Tenants by their own Warranty, the Tenements aforesaid with the Appurtenances, in Form aforesaid, &c. |
| "Defence of the
"Vouchees. | "And whereupon he saith, that he himself was seised of
"the Tenements aforesaid, with the Appurtenances, in his
"Demefne as of Fee and Right, in Time of Peace, in the
"Time of the Lord the King that now is, by taking the
"Profits thereof to the Value, &c. And into which, &c. |
| "Second Voucher. | "And thereupon he bringeth Suit, &c. And the aforesaid <i>Abraham, Cecilia, and John,</i> Tenants by their own |
| Warranty. | "Warranty, defend their Right, when, &c. and thereupon
"they further vouch to Warranty" <i>Jacob Morland</i> ; who |
| Demand against
the common
Vouchee. | is present here in Court in his proper Person, and the
Tenements aforesaid, with the Appurtenances, to them
freely warranteth, &c. And hereupon the said <i>Francis</i> |
| Count, | demandeth against the said <i>Jacob,</i> Tenant by his own
Warranty, the Tenements aforesaid, with the Appurtenances, in Form aforesaid, &c. And whereupon he |
| Defence of the
common Vouchee.
Plea, <i>Nul Disseisin.</i> | saith, that he himself was seised of the Tenements aforesaid, with the Appurtenances, in his Demefne as of Fee and Right, in Time of Peace, in the Time of the Lord the King that now is, by taking the Profits thereof to the Value, &c. And into which, &c. And thereupon he |
| Imparlanee. | bringeth Suit, &c. And the aforesaid <i>Jacob,</i> Tenant by his own Warranty, defends his Right, when, &c. And |
| Default of the
common Vouchee. | saith that the aforesaid <i>Hugh</i> did not disseise the aforesaid <i>Francis</i> of the Tenements aforesaid, as the aforesaid <i>Francis</i> by his Writ and Count aforesaid above doth suppose : |
| Judgment for the
Demandant. | And of this he puts himself upon the Country. And the aforesaid <i>Francis</i> thereupon craveth Leave to imparl; and he hath it. And afterwards the aforesaid <i>Francis</i> cometh again here into Court in this same Term in his proper Person, and the aforesaid <i>Jacob,</i> though solemnly called, cometh not again, but hath departed in Contempt of the Court, and maketh Default. Therefore it is considered, that the aforesaid <i>Francis</i> do recover his Seisin against the aforesaid <i>David</i> of the Tenements aforesaid, with the Appurtenances; And that the said <i>David</i> have of the Land of the aforesaid " <i>Abraham, Cecilia, and John,</i> to |
| Recovery in
Value, | "the Value [of the Tenements aforesaid;] And further,
"that the said <i>Abraham, Cecilia, and John,</i> have of the
"Land |

"Land of the said" *Jacob* to the Value [of the Tenements aforesaid.] And the said *Jacob* in Mercy. **And**  No. VII.
hereupon the said *Francis* prays a Writ of the Lord the King, to be directed to the Sheriff of the County aforesaid, to cause him to have full Seisin of the Tenements aforesaid with the Appurtenances: And it is granted unto him, returnable here without Delay. Afterwards, that is to say, the twenty eighth Day of *November* in this same Term here cometh the said *Francis* in his proper Person; and the Sheriff, namely *Sir Charles Thompson*, Knight, now sendeth, that he by virtue of the Writ aforesaid to him directed, on the twenty fourth Day of the same Month, did cause the said *Francis* to have full Seisin of the Tenements aforesaid with the Appurtenances, as he was commanded. **All and singular** which Premises, at the Request of the said *Francis*, by the Tenor of these Presents we have held good to be exemplified. In Testimony whereof, we have caused our Seal, appointed for sealing Writs in the Bench aforesaid to be affixed to these Presents. **Witness** *Sir John Willes*, Knight, at *West-Ten* minster the twenty eighth Day of *November* in the twenty first Year of our Reign.

Amercement.

Award of the Writ of Seisin, and Return.

Exemplification continued.

Cooke.

No. VIII.



No. VIII.

*Proceedings on an Action of Trespass in EJECT-
MENT, by Original, in the King's Bench.*

§. 1. *The Original Writ.*

*Si fecerit te secu-
rum.*

GEORGE the second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, To the Sheriff of Berkshire, Greeting. **I**f Richard Smith shall give you Security of prosecuting his Claim, then put by Gages and safe Pledges William Stiles, late of Newbury, Gentleman, so that he be before Us on the Morrow of All-Souls, where-soever we shall then be in England, to shew wherefore with Force and Arms he entered into one Messuage with the Appurtenances in Sutton, which John Rogers, Esquire, hath demised to the aforesaid Richard, for a Term which is not yet expired, and ejected him from his said Farm, and other Enormities to him did, to the great Damage of the said Richard, and against our Peace. And have you there the Names of the Pledges, and this Writ. **Witness** Ourselves at Westminster the twelfth Day of October, in the twenty ninth Year of our Reign.

Sheriff's Return.

| | |
|--------------------------------|----------------|
| Pledges of Prosecution | { John Doe. |
| | { Richard Roe. |
| The withinnamed William Stiles | { John Den. |
| is attached by Pledges, | { Richard Fen. |

§. 2. *Notice to the Tenant in Possession; to which a Copy of the Declaration is always annexed.*

Mr George Saunders;

I AM informed that you are in Possession of, or claim Title to, the Premises mentioned in this Declaration of Ejectment, or to some Part thereof; and I being sued in this Action as a casual Ejector, and having no Claim or Title to the same, do advise you to appear next Hilary Term in his Majesty's Court of King's Bench at Westminster,

ster, by some Attorney of that Court, and then and there, by a Rule to be made of the same Court, to cause yourself to be made Defendant in my Stead; otherwise I shall suffer Judgment to be entered against me, and you will be turned out of Possession.

No. VIII.

Your loving Friend,

5 January, 1756.

William Stiles.

§. 3. *The Rule of Court.*

Hilary Term, in the twenty ninth Year of King
GEORGE the second.

Berks, } It is ordered by the Court, by the Assent *Smith against Stiles;*
to wit. } of both Parties, and their Attorneys, that for one Messuage,
George Saunders, Gentleman, may be made Defendant, with the Appurtenances, in *Sutton,*
in the place of the now Defendant *William Stiles,* and on the Demise of
shall immediately appear to the Plaintiff's Action, and *John Rogers.*
shall receive a Declaration in a Plea of Trespass and Ejectment of the Tenements in question, and shall immediately plead thereto, Not Guilty: And, upon the Trial of the Issue, shall confess Lease, Entry, and Ouster, and insist upon his Title only. And if, upon Trial of the Issue, the said *George* do not confess Lease, Entry, and Ouster, and by reason thereof the Plaintiff cannot prosecute his Writ, then the Taxation of Costs upon such *Non prof.* shall cease, and the said *George* shall pay such Costs to the Plaintiff, as by the Court of our Lord the King here shall be taxed and adjudged for such his Default in Nonperformance of this Rule; and Judgment shall be entered against the said *William Stiles,* now the casual Ejector, by Default. And it is further ordered that, if upon the Trial of the said Issue a Verdict shall be given for the Defendant, or if the Plaintiff shall not prosecute his Writ, upon any other Cause, than for the not Confessing Lease, Entry, and Ouster as aforesaid, then the Lessor of the Plaintiff shall pay Costs, if the Plaintiff himself doth not pay them.

By the Court.

Martin, for the Plaintiff.*Newman,* for the Defendant.§. 4. *The*

No. VIII.

§. 4. *The Record.*

Pleas before the Lord the King at *Westminster*, of the Term of Saint *Hilary*, in the twenty ninth Year of the Reign of the Lord *GEORGE* the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, &c.

Writ.

Declaration, or
Count.

Defence.

Berks, } **George Saunders**, late of *Sutton* in the County
to wit. } ty aforesaid, Gentleman, was attached to
answer *Richard Smith*, of a Plea wherefore with Force
and Arms he entered into one Messuage with the Appur-
tenances in *Sutton*, which *John Rogers*, Esquire, hath
demised to the said *Richard* for a Term which is not yet
expired, and ejected him from his said Farm, and other
Wrongs to him did, to the great Damage of the said *Richard*
and against the Peace of the Lord the King that
now is. **And whereupon** the said *Richard* by *Robert Martin*
his Attorney complains, that whereas the said *John Rogers*
on the first Day of *October* in the twenty ninth Year of the
Reign of the Lord the King that now is, at *Sutton* aforesaid,
had demised to the same *Richard* the Tenement aforesaid with
the Appurtenances, to have and to hold the said Tenement with
the Appurtenances to the said *Richard* and his Assigns, from
the Feast of Saint *Michael* the Archangel then last past, to
the End and Term of five Years from thence next following
and fully to be complete and ended; by virtue of which
Demise the said *Richard* entered into the said Tenement with
the Appurtenances, and was thereof possessed; and, being so
possessed thereof, the said *George* afterwards, that is to say,
on the said first Day of *October* in the said twenty ninth
Year, with Force and Arms, that is to say, with Swords,
Staves, and Knives, entered into the said Tenement with
the Appurtenances, which the said *John Rogers* demised
to the said *Richard* in Form aforesaid for the Term aforesaid
which is not yet expired, and ejected the said *Richard*
out of the said Farm, and other Wrongs to him did, to the
great Damage of the said *Richard*, and against the Peace of
the said Lord the King; whereby the said *Richard* saith that
he is injured and endamaged to the Value of twenty Pounds:
And thereupon he brings Suit, [and good Proof.] **And** the
aforesaid *George Saunders*, by
Charles

Charles Newman his Attorney, comes and defends the Force and Injury, when [and where the Court shall award;] and saith that he is in no wise guilty of the Trespass and Ejectment aforesaid, as the said *Richard* above complains against him, and thereof he puts himself upon the Country; And the said *Richard* doth likewise the same: **Therefore** let a Jury come thereupon before the Lord the King, on the Octave of the Purification of the Blessed Virgin *Mary*, wheresoever he shall then be in *England*; who neither [are of Kin to the said *Richard*, nor to the said *George*;] to recognize [whether the said *George* be guilty of the Trespass and Ejectment aforesaid:] Because as well [the said *George*, as the said *Richard*, have put themselves on the said Jury.] The same Day is there given to the Parties aforesaid. **Afterwards** the Process therein is continued between the said Parties of the Plea aforesaid by the Jury appointed thereof between them, in Respite, before the Lord the King, until fifteen Days of *Easter* thence next ensuing, wheresoever the said Lord the King shall then be in *England*; unless the Justices of the Lord the King assigned to take Assises in the County aforesaid, shall have come before that time, to wit, on *Monday* the eighth Day of *March*, at *Reading* in the said County, by the form of the Statute [in that case provided,] by reason of the Default of the Jurors [summoned to appear as aforesaid.] At which Day before the Lord the King, at *Westminster*, come the Parties aforesaid by their Attorneys aforesaid; and the aforesaid Justices of Assise, before whom [the Jury aforesaid came,] sent here their Record before them had in these Words, to wit: **Afterwards** at the Day and Place within contained before *Heneage Legge*, Esquire, one of the Barons of the Exchequer of the Lord the King, and Sir *John Eardley Wilmot*, Knight, one of the Justices of the said Lord the King, assigned to hold Pleas before the King himself, Justices of the said Lord the King assigned to take Assises in the County of *Berks* by the form of the Statute [in that case provided,] come as well the within named *Richard Smith* as the within written *George Saunders*, by their Attorneys within contained; and the Jurors of the Jury whereof Mention is within made being called, certain of them, to wit, *Charles Holloway*, *John Hooke*, *Peter Graham*, *Henry Cox*, *William Brown*, and *Francis Oakley*, come, and are sworn upon that Jury: And because the Rest of the Jurors of the same Jury did not appear,

No. VIII.

Plea, Not Guilty.

Issue.

Venire awarded.

Jury respited, for Default.

Nisi prius.

Postea.

No. VIII.

*Tales de Circum-
stantibus.*

Verdict, for the
Plaintiff.

Motion in Arrest
of Judgment.

Continuance.

therefore others of the Bystanders being chosen by the Sheriff, at the Request of the said *Richard Smith*, and by the Command of the Justices aforesaid, are appointed a-new, whose Names are affixed to the Panel within written, according to the Form of the Statute in such Case made and provided; which said Jurors so appointed a-new, to wit, *Roger Bacon, Thomas Small, Charles Pye, Edward Hawkins, Samuel Roberts, and Daniel Parker*, being likewise called, come; and, together with the other Jurors aforesaid before impanelled and sworn, being elected, tried, and sworn, to speak the Truth of the Matter within contained, upon their Oath say, that the aforesaid *George Saunders* is guilty of the Trespass and Ejectment within-written, in Manner and Form as the aforesaid *Richard Smith* within complains against him, and assents the Damages of the said *Richard Smith*, on Occasion of that Trespass and Ejectment, besides his Costs and Charges by him put unto about his Suit in that Behalf, to twelve Pence, and, for those Costs and Charges, to forty Shillings. **Whereupon** the said *Richard Smith*, by his Attorney aforesaid, prayeth Judgment against the said *George Saunders*, in and upon the Verdict aforesaid by the Jurors aforesaid given in the form aforesaid: And the said *George Saunders*, by his Attorney aforesaid, saith that the Court here ought not to proceed to give Judgment upon the said Verdict, and prayeth that Judgment against him the said *George Saunders*, in and upon the Verdict aforesaid by the Jurors aforesaid given in the form aforesaid, may be stayed, by reason that the said Verdict is insufficient and erroneous, and that the same Verdict may be quashed, and that the Issue aforesaid may be tried a-new by other Jurors to be afresh impanelled. And, because the Court of the Lord the King here is not yet advised of giving their Judgment of and upon the Premises, therefore Day thereof is given as well to the said *Richard Smith* as the said *George Saunders*, before the Lord the King, until the Morrow of the *Ascension* of our Lord, wheresoever the said Lord the King shall then be in *England*, to hear their Judgment of and upon the Premises, for that the Court of the Lord the King is not yet advised thereof. At which Day before the Lord the King, at *Westminster*, come the Parties aforesaid by their Attorneys aforesaid; upon which, the Record and Matters aforesaid having been seen, and by the Court of the Lord the King now here fully understood,

and

and all and singular the Premises having been examined, and mature Deliberation being had thereupon, for that it seems to the Court of the Lord the King now here that the Verdict aforesaid is in no wise insufficient or erroneous, and that the same ought not to be quashed, and that no new Trial ought to be had of the Issue aforesaid, **Therefore it is considered**, that the said *Richard* do recover against the said *George* his Term yet to come, of and in the said Tenements with the Appurtenances, and the said Damages assessed by the said Jury in form aforesaid, and also twenty seven Pounds six Shillings and eight Pence for his Costs and Charges aforesaid, by the Court of the Lord the King here awarded to the said *Richard*, with his Assent, by way of Increase; which said Damages in the Whole amount to twenty nine Pounds, seven Shillings, and eight Pence. And let the said *George* be taken, [until he maketh Fine to the Lord the King.] **And hereupon** the said *Richard* by his Attorney aforesaid prayeth a Writ of the Lord the King, to be directed to the Sheriff of the County aforesaid, to cause him to have Possession of his Term aforesaid yet to come, of and in the Tenements aforesaid, with the Appurtenances: And it is granted unto him, returnable before the Lord the King on the Morrow of the *Holy Trinity*, wheresoever he shall then be in *England*. At which Day before the Lord the King, at *Westminster*, cometh the said *Richard* by his Attorney aforesaid; and the Sheriff, that is to say, Sir *Thomas Reeve*, Knight, now sendeth, that he by virtue of the Writ aforesaid to him directed, on the ninth Day of *June* last past, did cause the said *Richard* to have his Possession of his Term aforesaid yet to come, of and in the Tenements aforesaid, with the Appurtenances, as he was commanded.

No. VIII.

Opinion of the Court.

Judgment for the Plaintiff.

Costs.

Capiatur pro Fine.

Writ of Possession,

at and Return.

No. IX.

No. IX.

*Proceedings on an Action of DEBT, in the Court of
common Pleas; removed into the King's
Bench by Writ of ERROR.*

§. 1. Original.

Præcipe.

GEORGE the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth; To the Sheriff of *Oxfordshire*, Greeting: **Command** *Charles Long*, late of *Burford*, Gentleman, that justly and without delay he render to *William Burton* two hundred Pounds, which he owes him and unjustly detains, as he saith. And unless he shall so do, and if the said *William* shall make you secure of prosecuting his Claim, then summon by good Summoners the aforesaid *Charles*, that he be before our Justices at *Westminster*, from the Day of *Easter* in fifteen Days, to shew wherefore he hath not done it. And have you there the Summoners, and this Writ. Witness Ourself at *Westminster*, the twenty fourth Day of *March*, in the twenty eighth Year of our Reign.

Sheriff's Return;

Pledges of Prosecution

{ *John Doe.*
 Richard Roe.

Nihil.

The withinnamed *Charles Long* hath nothing in my Bailiwick, whereby he may be summoned, neither is he found in the same.

§. 2. Process.

Capias ad respondendum.

GEORGE the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth; To the Sheriff of *Oxfordshire*, Greeting: **We** command you, that you take *Charles Long*, late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before our Justices at *Westminster*, from the Day of *Easter*

Easter in five Weeks, to answer to *William Burton*, Gentleman, of a Plea, that he render to him two hundred Pounds, which he owes him and unjustly detains, as it is said: And whereupon you have returned to our Justices at *Westminster* that the said *Charles* hath nothing in your Bailiwick, whereby he may be summoned. And have there this Writ. Witness Sir *John Willes*, Knight, at *Westminster* the sixteenth Day of *April*, in the twenty eighth Year of our Reign.

No IX.

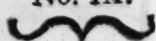
The withinnamed *Charles Long* is not found in my Sheriff's Return; Bailiwick.

Non est inventus.

GEORGE the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth; To the Sheriff of *Berkshire*, Greeting: We command you that you take *Charles Long*, late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before our Justices at *Westminster*, on the Morrow of the holy *Trinity*, to answer to *William Burton*, Gentleman, of a Plea, that he render to him two hundred Pounds; which he owes him and unjustly detains, as it is said: And whereupon our Sheriff of *Oxfordshire* hath made a Return to our Justices at *Westminster*, at a certain Day now past, that the aforesaid *Charles* is not found in his Bailiwick; and thereupon it is testified in our said Court, that the aforesaid *Charles* lurks, wanders, and runs about in your County. And have there then this Writ. Witness Sir *John Willes*, Knight, at *Westminster*, the sixth Day of *May*, in the twenty eighth Year of our Reign.

By virtue of this Writ to me directed, I have taken Sheriff's Return; the Body of the withinnamed *Charles Long*; which I have ready at the Day and Place withincontained, according as by this Writ it is commanded me.

No. IX.



“ §. 3. * *Bill of Middlesex, and Latitat thereupon, in the Court of King's Bench.*

“ *Bill of Middlesex, for Trespas;*

“ *Middlesex,* } “ **The Sheriff** is commanded that he
“ to wit. } “ take *Charles Long*, late of *Burford* in

“ the County of *Oxford*, if he may be found in his Baili-
“ wick, and him safely keep, so that he may have his Bo-
“ dy before the Lord the King at *Westminster*, on *Wednes-*
“ day next after fifteen Days of *Easter*, to answer *William*

“ *ac etiam* in Debt.

“ *Burton*, Gentleman, of a Plea of Trespas; and also
“ to a Bill of the said *William* against the aforesaid *Charles*
“ for two hundred Pounds of Debt, according to the
“ Custom of the Court of the said Lord the King, before
“ the King himself to be exhibited; and that he have
“ there then this Precept.

“ *Sheriff's Return;*
“ *Non est inventus.*

“ The within named *Charles Long* is not found in my
Bailiwick.

“ *Latitat.*

“ **GEORGE** the second, by the Grace of God, of
“ *Great Britain, France, and Ireland*, King, Defender
“ of the Faith, and so forth; To the Sheriff of *Berkshire*,
“ Greeting. **Whereas** we lately commanded our Sheriff
“ of *Middlesex* that he should take *Charles Long*, late of
“ *Burford* in the County of *Oxford*, if he might be found
“ in his Bailiwick, and him safely keep, so that he might
“ be before Us at *Westminster*, at a certain Day now past,
“ to answer unto *William Burton*, Gentleman, of a Plea
“ of Trespas; and also to a Bill of the said *William*
“ against the aforesaid *Charles*, for two hundred Pounds
“ of Debt, according to the Custom of our Court, before
“ Us to be exhibited; and our said Sheriff of *Middlesex* at
“ that Day returned to us that the aforesaid *Charles* was
“ not found in his Bailiwick; Whereupon on the Behalf
“ of the aforesaid *William* in our Court before Us it is
“ sufficiently attested, that the aforesaid *Charles* lurks and
“ runs about in your County: **Therefore** we command
“ you, that you take him, if he may be found in your
“ Bailiwick, and him safely keep, so that you may have

* Note, that §. 3, and §. 4, are the usual Methods of Process, to compel an Appearance, in the Courts of *King's Bench*, and *Exchequer*; in which the Practice of those Courts does principally differ from that of the Court of *common Pleas*: The subsequent Stages of Proceeding being nearly alike in them all,

“his Body before Us at *Westminster* on *Tuesday* next after
“five Weeks of *Easter*, to answer to the aforesaid *William*
“of the Plea and Bill aforesaid: And have there then this
“Writ. Witness Sir *Dudley Ryder*, Knight, at *Westmin-*
“*ster*, the eighteenth Day of *April*, in the twenty eighth
“Year of our Reign.

“By virtue of this Writ to me directed, I have taken “*Sheriff's Return;*
“the Body of the within named *Charles Long*; which I “*Cepi Corpus,*
“have ready at the Day and Place within contained, ac-
“cording as by this Writ it is commanded me.

“§. 4. *Writ of Quo minus in the Exchequer.*

“**GEORGE** the second, by the Grace of God, of
“*Great Britain, France, and Ireland*, King, Defen-
“der of the Faith, and so forth; To the Sheriff of *Berk-*
“*shire*, Greeting. We command you that you omit not
“by reason of any Liberty of your County, but that you
“enter the same, and take *Charles Long*, late of *Burford*
“in the County of *Oxford*, Gentleman, wheresoever he
“shall be found in your Bailiwick, and him safely keep,
“so that you may have his Body before the Barons of our
“Exchequer at *Westminster*, on the Morrow of the holy
“Trinity, to answer *William Burton* our Debtor of a Plea,
“that he render to him two hundred Pounds which he
“owes him and unjustly detains, whereby he is the less
“able to satisfy Us the Debts which he owes Us at our
“said Exchequer, as he saith he can reasonably shew that
“the same he ought to render: And have you there this
“Writ. Witness Sir *Thomas Parker*, Knight, at *West-*
“*minster*, the sixth Day of *May*, in the twenty eighth Year
“of our Reign.

“By Virtue of this Writ to me directed, I have taken “*Sheriff's Return.*
“the Body of the withinnamed *Charles Long*; which I “*Cepi Corpus.*
“have ready before the Barons within written, according
“as within it is commanded me.”

• §. 5. *Special*

No. IX.

§. 5. *Special Bail-piece.**Trinity Term, 28 GEO. 2.*

Berks, } *On a Testatum Capias against Charles Long,*
 to wit. } late of *Burford* in the County of *Oxford*,
 Gentleman, returnable on the Morrow of the holy *Trinity*,
 at the Suit of *William Burton*, of a Plea of Debt of
 two hundred Pounds;

The Bail are, John Rose, of Witney in the County
of Oxford, Esquire.

Peter Hammond, of Northbleigh in the
said County, Yeoman.

Richard Price, Attorney }
 for the Defendant.

The Party himself in £ 400.

Each of the Bail in £ 200.

Taken and acknowledged the twenty
 eighth Day of *May*, in the Year of
 our Lord one thousand, seven hun-
 dred, and fifty five, *de bene esse*, be-
 fore me

Robert Grove,
 one of the Commissioners.

§. 6. *The Record, as removed by Writ of Error.*

Writ of Error.

The Lord the King hath given in Charge to his trusty
 and beloved Sir *John Willes*, Knight, his Writ closed in
 these Words: **GEORGE** the second, by the Grace of God,
 of *Great Britain, France, and Ireland*, King. Defender
 of the Faith, and so forth, To our trusty and beloved Sir
John Willes, Knight, Greeting: **Because** in the Re-
 cord, and Process, and also in the Giving of Judgment,
 of the Plaint which was in our Court before you, and
 your Fellows, our Justices of the Bench, by our Writ,
 between *William Burton*, Gentleman, and *Charles Long*,
 late of *Burford* in the County of *Oxford*, Gentleman, of
 a certain Debt of two hundred Pounds, which the said
William demands of the said *Charles*, manifest Error hath
 intervened, to the great Damage of him the said *William*,
 as we from his Complaint are informed: We, being will-
 ing that the Error, if any there be, should be corrected
 in due Manner, and that full and speedy Justice should be
 done

done to the Parties aforesaid in this Behalf, do command you, that, if Judgment thereof be given, then under your Seal you do distinctly and openly send the Record and Process of the Plaint aforesaid, with all Things concerning them, and this Writ; so that We may have them from the Day of *Easter* in fifteen Days, wheresoever We shall then be in *England*, that the Record and Process aforesaid being inspected, we may cause to be done thereupon for correcting that Error what of Right and according to the Law and Custom of our Realm of *England* ought be done. **Witness** Ourself at *Westminster* the twelfth Day of *February* in the twenty ninth Year of our Reign.

The Record and Process, whereof in the said Writ Chief Justice's Return above is made, follow in these Words, to wit.

Pleas at *Westminster* before Sir *John Willes*, Knight, The Record, and his Brethren, Justices of the Bench of the Lord the King at *Westminster*, of the Term of the holy *Trinity*, in the twenty eighth Year of the Reign of the Lord **GEORGE** the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, &c.

Oxon, } **Charles Long**, late of *Burford* in the County of *Oxon*, Writ. to wit. } ty aforesaid, Gentleman, was summoned to answer *William Burton* of *Yarnton* in the said County, Gentleman, of a Plea that he render unto him two hundred Pounds, which he owes him and unjustly detains, [as he saith.] **And whereupon** the said *William*, by Declaration or Count, on a Bond. *Thomas Gough* his Attorney, complains, that whereas on the first Day of *December* in the Year of our Lord one thousand, seven hundred; and fifty four, at *Banbury* in this County, the said *Charles* by his Writing obligatory did acknowledge himself to be bound to the said *William* in the said Sum of two hundred Pounds of lawful Money of *Great Britain*, to be paid to the said *William*, whenever after the said *Charles* should be thereto required; nevertheless the said *Charles* (although often required) hath not paid to the said *William* the said Sum of two hundred Pounds, nor any Part thereof, but hitherto altogether hath refused, and doth still refuse, to render the same; wherefore he saith that he is injured, and hath Damage, to the Value of ten Pounds: And thereupon he brings Suit,

No. IX.

Defence.

Oyer prayed of the Bond, and Condition, viz. to perform an Award.


Imparlance.

Suit, [and good Proof.] And he brings here into Court the Writing obligatory aforesaid, which testifies the Debt aforesaid in Form aforesaid; the Date whereof is the Day and Year beforementioned. And the aforesaid *Charles*, by *Richard Price* his Attorney, comes and defends the Force and Injury when [and where the Court shall award,] and craves *Oyer* of the said Writing obligatory, and it is read unto him [in the form aforesaid:] He likewise craves *Oyer* of the Condition of the said Writing, and it is read unto him in these Words; "The Condition of this Obligation is such, that if the above bounden *Charles Long*, his Heirs, Executors, and Administrators, and every of them, shall and do from Time to Time, and at all Times hereafter, well and truly stand to, obey, observe, fulfill, and keep, the Award, Arbitrament, Order, Rule, Judgment, final End, and Determination, of *David Stiles*, of *Woodstock* in the said County, Clerk, and *Henry Bacon* of *Woodstock* aforesaid, Gentleman, (Arbitrators indifferently nominated and chosen by and between the said *Charles Long* and the abovenamed *William Burton*, to arbitrate, award, order, rule, judge, and determine, of all and all manner of Actions, Cause or Causes of Action, Suits, Plaints, Debts, Duties, Reckonings, Accounts, Controversies, Trespasses, and Demands whatsoever, had, moved, or depending, or which might been had, moved, or depending, by and between the said Parties, for any Matter, Cause, or Thing, from the Beginning of the World until the Day of the Date hereof) which the said Arbitrators shall make and publish, of or in the Premises, in Writing under their Hands and Seals, or otherwise by Word of Mouth, in the presence of two credible Witnesses, on or before the first Day of *January* next ensuing the Date hereof; then this Obligation to be void and of none Effect, or else to be and remain in full Force and Virtue." Which being read and heard, the said *Charles* prays leave to imparl therein here until the Octave of the holy *Trinity*; and it is granted unto him. The same Day is given to the said *William Burton* here, &c. At which Day, to wit, on the Octave of the holy *Trinity*, here come as well the said *William Burton* as the said *Charles Long*, by their Attorneys aforesaid: And hereupon the said *William* prays that the said *Charles* may answer to his Writ and Count aforesaid. And the aforesaid *Charles* de-

fends

sends the Force and Injury, when, &c, and saith, that the said *William* ought not to have or maintain his said Action against him, because he saith, that the said *David Stiles* and *Henry Bacon*, the Arbitrators before named in the said Condition, did not make any such Award, Order, Rule, Judgment, final End, or Determination, of or in the Premises above specified in the said Condition, on or before the first Day of *January*, in the Condition aforesaid above mentioned, according to the Form and Effect of the said Condition: And this he is ready to verify. Wherefore he prays Judgment, whether the said *William* ought to have or maintain his said Action thereof against him; [and that he may go thereof without a Day.] And the aforesaid *William* saith, that, for any thing above alleged by the said *Charles* in Pleading, he ought not to be precluded from having his said Action thereof against him; because he saith, that after the making of the said Writing obligatory, and before the said first Day of *January*, to wit, on the twenty sixth Day of *December*, in the Year aforesaid, at *Banbury* aforesaid, in the Presence of two credible Witnesses, namely, *John Dew* of *Charlbury*, in the County aforesaid, and *Richard Morris* of *Wigbitham* in the County of *Berks*, the said Arbitrators undertook the Charge of the Award, Order, Rule, Judgment, final End, and Determination aforesaid, of and in the Premises specified in the Condition aforesaid; and then and there made and published their Award by Word of Mouth in Manner and Form following, that is to say; The said Arbitrators did award, order, and adjudge, that he the said *Charles Long* should forthwith pay to the said *William Burton* the Sum of seventy five Pounds, and that thereupon all Differences between them at the time of the making the said Writing obligatory should finally cease and determine. And the said *William* further saith that although he afterwards, to wit on the sixth Day of *January*, in the Year of our Lord, one thousand, seven hundred, and fifty five, at *Banbury* aforesaid, requested the said *Charles* to pay to him the said *William* the said seventy five Pounds, yet (by Protestation that the said *Charles* hath not paid the said *William* the said Sum, nor any Penny thereof) for further Plea therein he saith, that the said *Charles* the said seventy five Pounds to the said *William* hath not hitherto paid: And this he is ready to verify. Wherefore he prays Judgment, and his Debt aforesaid, together with his Damages occasioned by

No. IX.


 Plea,
No such Award.

 Replication;
setting forth an
Award.

No. IX.

Demurrer.

Causes of Demurrer.

Joinder in Demurrer.

Continuances.

by the Detention of the said Debt to be adjudged unto him, &c. **And** the aforesaid *Charles* saith, that the Plea aforesaid, by him the said *William* in Manner and Form aforesaid above in his Replication pleaded, and the Matter in the same contained, are in no wise sufficient in Law for the said *William* to have or maintain his Action aforesaid thereupon against him the said *Charles*; to which the said *Charles* hath no Necessity, neither is he obliged by the Law of the Land, in any manner to answer: And this he is ready to verify. Wherefore, for want of a sufficient Replication in this behalf, the said *Charles*, as aforesaid, prays Judgment, and that the aforesaid *William* may be precluded from having his Action aforesaid thereupon against him, &c. And the said *Charles*, according to the Form of the Statute in that case made and provided, shews to the Court here the Causes of Demurrer following; to wit, that it doth not appear, by the Replication aforesaid, that the said Arbitrators made the same Award in the presence of two credible Witnesses on or before the said first Day of *January*, as they ought to have done, according to the Form and Effect of the Condition aforesaid; and that the Replication aforesaid is uncertain, insufficient, and wants Form. **And** the aforesaid *William* saith, that the Plea aforesaid by him the said *William*, in Manner and Form aforesaid, above in his Replication pleaded, and the Matter in the same contained, are good and sufficient in Law for the said *William* to have and maintain the said Action of him the said *William* thereupon against the said *Charles*; which said Plea, and the Matter therein contained, the same *William* is ready to verify and prove as the Court shall award: And because the aforesaid *Charles* hath not answered to that Plea, nor hath he hitherto in any Manner denied the same, the said *William* as before prays Judgment, and his Debt aforesaid, together with his Damages occasioned by the Detention of that Debt to be adjudged unto him, &c. **And because** the Justices here will advise themselves of and upon the Premises before they give Judgment thereupon, a Day is thereupon given to the Parties aforesaid here, until the Morrow of *All-Souls*, to hear their Judgment thereupon, for that the said Justices here are not yet advised thereof. At which Day here come as well the said *Charles* as the said *William*, by their said Attorneys; and because the said Justices here will further advise themselves of and upon the Premises before

before they give Judgment thereupon, a Day is further given to the Parties aforesaid here until the Octave of Saint Hilary, to hear their Judgment thereupon, for that the said Justices here are not yet advised thereof. At which Day here come as well the said *William Burton* as the said *Charles Long*, by their said Attorneys: **Whereupon** the Record and Matters aforesaid having been seen, and by the Justices here fully understood, and all and singular the Premises being examined, and mature Deliberation being had thereupon; for that it seems to the said Justices here, that the said Plea of the said *William Burton* before in his Replication pleaded, and the Matter therein contained, are not sufficient in Law, to have and maintain the Action of the aforesaid *William* against the aforesaid *Charles*; **Therefore it is considered**, that the aforesaid *William* take nothing by his Writ aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, be in Mercy for his false Complaint; and that the aforesaid *Charles* go thereof without a Day, &c.

Opinion of the Court:

Replication insufficient,

Judgment for the Defendant.

Amercement of the Plaintiff, and his Pledges.

Afterwards, to wit, on *Wednesday* next after fifteen Days of *Easter* in this same Term, before the Lord the King, at *Westminster*, comes the aforesaid *William Burton*, by *Peter Manwaring* his Attorney, and saith, that in the Record and Process aforesaid, and also in the Giving of the Judgment in the Plaint aforesaid, it is manifestly erred in this, to wit, that the Judgment aforesaid was given in Form aforesaid for the said *Charles Long* against the aforesaid *William Burton*, where by the Law of the Land Judgment should have been given for the said *William Burton* against the said *Charles Long*: And this he is ready to verify. **And** the said *William* prays the Writ of the said Lord the King, to warn the said *Charles Long* to be before the said Lord the King to hear the Record and Process aforesaid: And it is granted unto him: By which the Sheriff aforesaid is commanded that by good [and lawful Men of his Bailiwick,] he cause the aforesaid *Charles Long* to know, that he be before the Lord the King from the Day of *Easter* in five Weeks, wheresoever [he shall then be in *England*,] to hear the Record and Process aforesaid, if [it shall have happened that in the same any Error shall have intervened;] and further [to do and receive what the Court of the Lord the King shall consider in this Behalf.] The same Day is given to the aforesaid *William Burton*.

General Error assigned,

Writ of Scire facias, to hear Errors.

No. IX.

Sheriff's Return;
Scire feci.

Error assigned
afresh.

Rejoinder,
In nullo est erratum.

Continuance.

Opinion of the
Court.

Burton. **At which Day** before the Lord the King, at *Westminster*, comes the aforesaid *William Burton*, by his Attorney aforesaid; And the Sheriff returns, that by Virtue of the Writ aforesaid to him directed he had caused the said *Charles Long* to know, that he be before the Lord the King at the Time aforesaid in the said Writ contained, by *John Den* and *Richard Fen*, good, &c; as by the same Writ was commanded him: Which said *Charles Long*, according to the Warning given him in this behalf, here cometh by *Thomas Webb* his Attorney; **Whereupon** the said *William* saith, that in the Record and Process aforesaid, and also in the Giving of the Judgment aforesaid, it is manifestly erred, alleging the Error aforesaid by him in the Form aforesaid alleged, and prays, that the Judgment aforesaid for the Error aforesaid, and others, in the Record and Process aforesaid being, may be reversed, annulled, and entirely for nothing esteemed, and that the said *Charles* may rejoin to the Errors aforesaid, and that the Court of the said Lord the King here may proceed to the Examination as well of the Record and Process aforesaid, as of the Matter aforesaid above for Error assigned. **And** the said *Charles* saith, that neither in the Record and Process aforesaid, nor in the Giving of the Judgment aforesaid in any thing is there erred; and he prays in like manner that the Court of the said Lord the King here may proceed to the Examination as well of the Record and Process aforesaid, as of the Matters aforesaid, above for Error assigned. **And because** the Court of the Lord the King here is not yet advised what Judgment to give of and upon the Premises, a Day is thereof given to the Parties aforesaid until the Morrow of the holy *Trinity*, before the Lord the King, wheresoever he shall then be in *England*, to hear their Judgment of and upon the Premises, for that the Court of the Lord the King here is not yet advised thereof. At which Day before the Lord the King at *Westminster* come the Parties aforesaid by their Attorneys aforesaid: **Whereupon** as well the Record and Process aforesaid, and the Judgment thereupon given, as the Matters aforesaid by the said *William* above for Error assigned, being seen, and by the Court of the Lord the King here being fully understood, and mature Deliberation being thereupon had, for that it appears to the Court of the Lord the King here, that in the Record and Process aforesaid, and also in the Giving of the Judgment aforesaid

foresaid, it is manifestly erred, **Therefore it is considered**, that the Judgment aforesaid for the Error aforesaid and others in the Record and Process aforesaid, be reversed, annulled, and entirely for nothing esteemed; and that the aforesaid *William* recover against the aforesaid *Charles* his Debt aforesaid, and also fifty Pounds for his Damages which he hath sustained as well on Occasion of the Detention of the said Debt, as for his Costs and Charges by him put unto about his Suit in this behalf, to the said *William* with his Consent by the Court of the Lord the King here adjudged; And the said *Charles* in

No. IX.

Judgment of the common Pleas reversed.
Judgment for the Plaintiff.

Defendant amerced.

§. 7. *Process of Execution.*

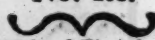
GEORGE the second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth; To the Sheriff of *Oxfordshire*, Greeting. **We** command you that you take *Charles Long*, of *Burford* in the County aforesaid, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before Us in three Weeks from the Day of the holy *Trinity*, wheresoever we shall then be in *England*, to satisfy *William Burton* for two hundred Pounds Debt, which the said *William Burton* hath lately recovered against him in our Court before Us, and also fifty Pounds, which were adjudged in our said Court before Us to the said *William Burton*, for his Damages which he hath sustained as well by Occasion of the Detention of his said Debt, as for his Costs and Charges by him put unto about his Suit in this behalf, whereof the said *Charles Long* is convicted, as it appears to Us of Record: And have there then this Writ. **Witness** Sir *Thomas Denison**, Knight, at *Westminster*, the nineteenth Day of *June*, in the twenty ninth Year of our Reign.

By Virtue of this Writ to me directed, I have taken Sheriff's Return; the Body of the withinnamed *Charles Long*, which I have ready before the Lord the King, at *Westminster*, at the Day within written, as it is within commanded me.

* The senior puisné Justice; there being no chief Justice that Term.

GEORGE

No. IX.


Writ of Fieri fa-
cias.

GEORGE the second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth; To the Sheriff of *Oxfordshire*, Greeting. **We** command you, that of the Goods and Chattels within your Bailiwick of *Charles Long*, late of *Burford* in the County aforesaid, you cause to be made two hundred Pounds Debt, which *William Burton* lately in our Court before Us at *Westminster* hath recovered against him, and also fifty Pounds which were adjudged in our Court before Us to the said *William*, for his Damages which he hath sustained, as well by Occasion of the Detention of his said Debt, as for his Costs and Charges by him put unto about his Suit in this Behalf, whereof the said *Charles Long* is convicted, as it appears to Us of Record: And have that Money before Us in three Weeks from the Day of the holy *Trinity*, wheresoever We shall then be in *England*, to render to the said *William* of his Debt and Damages aforesaid: And have there then this Writ. **Witness** Sir *Thomas Denison*, Knight, at *Westminster*, the nineteenth Day of *June*, in the twenty ninth Year of our Reign.

Sheriff's Return;
Fieri feci.

By Virtue of this Writ to me directed, I have caused to be made of the Goods and Chattels of the withinwritten *Charles Long*, two hundred and fifty Pounds: Which Money I have ready before the Lord the King at *Westminster* at the Day within written, as it is within commanded me.

No. X.

*Proceedings on an INDICTMENT of Murder,
at the Assises.*§. 1. *Indictment, and Conviction of Murder.*

Warwickshire } **BE** it remembered, that at the Sessions of Oyer and Terminer of the
to wit, } sion of Oyer and Terminer of the
Lord the King, holden at *Warwick*, in and for the said County, on *Friday* the twelfth Day of *March* in the twentieth Year of the Reign of the Lord *GEORGE* the second, now King of *Great Britain*, before Sir *William Lee*, Knight, chief Justice of the said Lord the King assigned to hold Pleas before the King himself, Sir *Thomas Burnet*, Knight, one of the Justices of the said Lord the King of the Bench, and others their Fellows, Justices of the said Lord the King, assigned by Letters patent of the said Lord the King, under the great Seal of *Great Britain*, made to them the aforesaid Justices and others, and any or two or more of them, (whereof one of them the said Sir *William Lee* and Sir *Thomas Burnet* among others in the said Letters patent named, the said Lord the King would should be one) to enquire fully by the Oath of good and lawful Men of the County aforesaid, by whom the Truth of the Matter might be the better known, (and by other Ways, Methods, and Means, whereby they might the better know, or be able, as well within Liberties as without,) the Truth of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Murders, Felonies, Man slaughters, Killings, Burglaries, Rapes of Women, and other Misdeeds, Offences, and Injuries whatsoever, and also the Accessories of the same, within the County aforesaid, as well within Liberties as without, by whomsoever and howsoever done, had, perpetrated, and committed, and by whom, to whom, when, how, and in what manner; and of other Articles and Offences in the said Letters patent of the said Lord the King specified, the Premises and every and each of them howsoever concerning; and to hear and determine the said Treasons and other the Premises, according to the Law

M

and

No. X.

Grand Jury.

Indictment.

Capias.

Sessions of Gaol-delivery.

and Custom of the Realm of *England*; and also Keepers of the Peace, and Justices of the said Lord the King, assigned to hear and determine divers Felonies, Trespases, and other Misdemeanors committed within the County aforesaid; by the Oath of Sir *James Thompson*, Baronet, *Charles Reper*, *Henry Dawes*, *Peter Wilson*, *Samuel Rogers*, *John Dawson*, *James Philips*, *John Mayo*, *Richard Savage*, *William Bell*, *James Morris*, *Laurence Hall*, and *Charles Carter*, Esquires, good and lawful Men of the County aforesaid, impanelled, sworn, and charged to enquire for the said Lord the King and for the Body of the said County, **that** *Peter Hunt*, late of *Birmingham* in the said County, Gentleman, not having God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the fifth Day of *March* in the said twentieth Year of the Reign of the said Lord the King, at *Birmingham* aforesaid, with Force and Arms, in and upon one *Samuel Collins*, in the Peace of God and of the said Lord the King then and there being, feloniously, wilfully, and of his Malice aforethought, did make an Assault; and that the said *Peter Hunt* with a certain drawn Sword, of the value of five Shillings, which he the said *Peter Hunt* in his right Hand then and there had and held, the said *Samuel Collins* in and upon the left Side of the Belly of him the said *Samuel Collins* then and there feloniously, wilfully, and of his Malice aforethought did strike and thrust; giving unto the said *Samuel Collins*, then and there, with the Sword aforesaid, in and upon the left Side of the Belly of him the said *Samuel Collins*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches; of which said mortal Wound he the said *Samuel Collins* then and there instantly died: And so the said *Peter Hunt* him the said *Samuel Collins*, on the aforesaid fifth Day of *March*, in the Year aforesaid, at *Birmingham* aforesaid, in the County aforesaid, in Manner and Form aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder, against the Peace of the said Lord the now King, his Crown, and Dignity. **Whereupon** the Sheriff of the County aforesaid is commanded, that he omit not for any Liberty in his Bailiwick, but that he take the said *Peter Hunt*, if he may be found in his Bailiwick, and him safely keep, to answer to the Felony and Murder whereof he stands indicted. **Which** said Indictment the said Justices of the Lord the King abovenamed, afterwards,

to wit, at the Delivery of the Goal of the said Lord the King, holden at *Warwick* in and for the County aforesaid, on *Friday* the sixth Day of *August*, in the twenty first Year of the Reign of the said Lord the King, before *Charles Clarke*, Esquire, one of the Barons of the Exchequer of the said Lord the King, *Sir Michael Foster*, Knight, one of the Justices of the said Lord the King assigned to hold Pleas before the King himself, and others their Fellows, Justices of the said Lord the King, assigned to deliver his said Gaol of the County aforesaid of the Prisoners therein being, by their proper Hands do deliver here in Court of Record in Form of Law to be determined. **And afterwards**, to wit, at the same Delivery of the Gaol of the said Lord the King of his County aforesaid, on the said *Friday* the sixth Day of *August*, in the said twenty first Year of the Reign of the said Lord the King, before the said Justices of the Lord the King last above named and others their Fellows aforesaid, here cometh the said *Peter Hunt*, under the Custody of *William Browne*, Esquire, Sheriff of the County aforesaid, (in whose Custody in the Goal of the County aforesaid, for the Cause aforesaid, he had been before committed) being brought to the Bar by the said Sheriff, to whom he is here also committed : **And** forthwith being demanded of the Premises aforesaid above charged upon him how he will acquit himself thereof, he saith, that he is not guilty thereof ; and thereof for Good and Evil he puts himself upon the Country : **Therefore** let a Jury thereupon here immediately come before the said Justices of the Lord the King last abovenamed, and others their Fellows aforesaid, by whom the Truth of the Matter may be the better known, and who have no Affinity to the said *Peter Hunt*, to recognize upon their Oath, whether the said *Peter Hunt* be guilty of the Premises in the Indictment aforesaid above specified, or not guilty : And the Jurors of the said Jury by the said Sheriff for this Purpose impanelled and returned, to wit, *David Williams*, *John Smith*, *Thomas Horne*, *Charles Nokes*, *Richard May*, *Walter Duke*, *Matthew Lyon*, *James White*, *William Bates*, *Oliver Green*, *Bartholomew Nash*, and *Henry Long*, being called, come ; Who being elected, tried, and sworn, to speak the Truth of the Premises, upon their Oath say, **that** the said *Peter Hunt* is guilty of the Felony and Murder aforesaid, on him above charged in the

Arraignment,

Plea, Not Guilty,

Venire,

Verdict, Guilty of Murder.

Form

No. X.

Judgment of
Death.

Form aforesaid, as by the Indictment aforesaid is above supposed against him, and that the said *Peter Hunt* at the Time of committing the said Felony and Murder, or at any Time since, had no Goods or Chattels, Lands or Tenements, to the Knowledge of the said Jurors. And upon this it is demanded of him if he hath or knoweth any thing to say, wherefore the said Justices ought not upon the Premises to proceed to Judgment and Execution of him: Who nothing further saith, unless as he before had said: **Therefore it is considered** by the said Justices here, that the said *Peter Hunt* be hanged by the Neck till he be dead.

§. 2. *Conviction of Manslaughter.*Verdict, Not guilty of Murder;
Guilty of Manslaughter.Clergy prayed.
Judgment, to be
branded.

— upon their Oath say, **that** the said *Peter Hunt* is not guilty of the Murder aforesaid, above charged upon him; but that the said *Peter* is guilty of the felonious Slaying of the aforesaid *Samuel Collins*; and that he had no Goods or Chattels, Lands or Tenements, at the Time of the Felony and Manslaughter aforesaid, or ever afterwards to their Knowledge. And immediately it is demanded of the said *Peter*, if he hath or knoweth any thing to say, wherefore the Justices here ought not upon the Premises to proceed to Judgment and Execution of him; **Who saith** that he is a Clerk, and prayeth the Benefit of Clergy to be allowed him in this behalf: **Therefore it is considered** by the said Justices here, that the said *Peter Hunt* be branded in his left Hand, according to the Form of the Statute in such Case made and provided.

THE END.

